

Vol. II.
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 219.

THE CITY OF HOUSTON, APPELLANT,

SOUTHWESTERN BELL TELEPHONE COMPANY

No. 220.

**SOUTHWESTERN BELL TELEPHONE COMPANY,
APPELLANT,**

THE CITY OF HOUSTON ET AL

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF TEXAS**

FILED FEBRUARY 7, 1911.

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THE CITY OF HOUSTON, APPELLANT,

vs.

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No. 108. Equity.

SOUTHWESTERN BELL TELEPHONE COMPANY

versus

THE CITY OF HOUSTON et al.

TRANSCRIPT OF RECORD ON APPEAL FROM UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.

VOLUME II.

1078 GEORGE P. PLAYER, a witness for the plaintiff, after being sworn, testified as follows:

Direct examination.

(Questions by Mr. J. D. Frank):

My name is George P. Player and I live in St. Louis, Missouri. My occupation is that of a telephone engineer, that is, telephone Valuation Engineer.

I am a member of an Association that we term the Telephone and Electrical Service Bureau. We do all classes of appraisal work, supervision, construction, auditing,—anything relative to public utility work. That firm is located in St. Louis, Missouri. The position I occupy with that firm is that of Valuation Engineer. My work as a Valuation Engineer is not confined to telephone business;—we do all kinds, electric systems, water, gas, telephone and telegraph. I have had experience in the telegraph business.

I started into the telephone business in the fall of 1898 with the Kinloch Company of St. Louis. That Company is not an associated company of the Bell Company; that is an independent company. I

started in as ground man in a line gang. That work consisted of digging holes, *holes*, assisting in placing materials along the different routes, pole lines, helping string wire, everything connected with that part of the telephone work. I was about six months in that class of work and at which time I received a slight injury in lifting a wagon and had to quit the outside work for a short period of time. I think about seven months elapsed when I went back to work for the Company in the capacity of night repair man at the main office switchboard. I remained on that class of work repairing and testing, clearing trouble on the central office equipment for about eight or nine months, or until the spring

of 1901; at that time I left the Kinloch Telephone Company and accepted the position of manager of the St. Charles, Missouri, Exchange, then under construction, and owned by the Kinloch Long Distance Telephone Company of Missouri. That Company was not the same as the Kinloch Telephone Company; had a different management, different board of directors, although some of the stockholders were the same,—the same people. They were doing the same class of business, that is, operating local exchanges and building and operating long distance toll lines. I stayed at the St. Charles Exchange for a little over three years, or until 1904. In the three years,—over three years, that I was in St. Charles, I did everything connected with the telephone business, from night operating to construction work, keeping the books, collecting, building lines of all characters, installing telephones,—general work connected with the telephone business. In the spring of 1902, 1080 the Kinloch Company was building its lines from St. Louis to Joplin, Missouri, and Pittsburg, Kansas, and I was made Assistant Superintendent of construction of that work. The number of men I had working under me on that work varied from 60 to 100, we were building a very high grade line, heavy poles, heavy construction was considered, and I believe is still considered, one of the best lines out of St. Louis. In 1904 the Kinloch Long Distance Telephone Company constructed a new long distance switch board in the Century Building, St. Louis, and I was placed in charge of the long distance operating and as Long Distance Wire Chief. That gave me supervision over the lines from St. Louis to Terre Haute, Indiana, St. Louis, nearly to Kansas City, where we had a junction pole connection with the Home Company and to Pittsburg, Kansas and Joplin, Missouri. I had 17 men under me at that time, stationed at various points along the lines for the purpose of maintenance and incidental construction work. In the spring of 1905 there was a consolidation between the Kinloch Telephone Company and the Kinloch Long Distance Telephone Company. It was deemed economical to consolidate some of the offices and the Company saw fit to make me manager of the St. Louis County Company, which was known as a Suburban Telephone Company and turned the local office work, testing and all that class of work over to the Wire Chief of the local company.

In St. Louis County there were two exchanges in operation and it was necessary to begin rebuilding, rehabilitating those properties at once, and also we begun the construction of the two exchanges. One at Kirkwood and one at Webster. I had general supervision of all the lay-out of the plants, both Webster and Kirkwood, fairly good sized exchanges. By lay-out I mean supervision over construction and location of the central office and placing of the central office equipment in general. I had general supervision. I did not complete these installation-, however, because at the end of the year, owing to a situation that arose at Greenville, Illinois, where an independent company was sandwiched in between two Bell Exchanges, they wanted someone there to build up the business and construct a plant, and I accepted the position of

General Manager of that Independent Company at Greenville. I stayed with that Company about a year and a half, built, oh, I guess, about thirty odd miles of line out through the country and several miles of line within the town limits, brought the Exchange up from one hundred and twenty five telephones, I think it was, to four hundred, and there I had the experience of doing all classes of telephone work. The position or the title of General Manager of that Company was title only. Because, I dug holes, climbed poles and laid conduit, dug manholes, and laid the brick, did all the work connected with that property and I had something like about fifteen men, ten men and five operators,—and after about a year and a half of that work, I decided that I would go into business for myself and open up an office as a consulting engineer and electrical constructor.

1082 That was in the year 1907. As a contractor I wired houses for the electric lighting systems, made the installation of all of that kind of equipment and operating through Southern Illinois, giving advice and rendering service to Independent Telephone Companies. I had two or three nice little jobs, as the fellows called it in those days,—one at Carbondale, Illinois, and one at Marrisso, general supervision work, helping people out with their plants, and another one at Highland, Illinois, made an appraisal of that plant; that was the first appraisal I ever made. It was a telephone plant.

I do not remember exactly how many months I was in the contracting business. I stayed in the contract work until I worked myself out of a job. We wired every house that was to be wired in the town and woke one morning with the town completely wired, and no new buildings going up, and practically nothing to do. Just about that time, I received a letter from the Corporation Commission of the State of Oklahoma. They were desiring the services of a telephone engineer. It was called the Corporation Commission and did the work of a Public Service Commission and has jurisdiction over all classes of public utilities; I had some correspondence with that Commission, went down to see them at their instance, and at the instance of the State's Attorney General, I went to Madison, Wisconsin, was examined by Chairman Meyer of the Wisconsin

Commission and their Engineers as to my ability to hold the
1083 position of Telephone Engineer for a Commission, and received from Chairman Meyer a very good letter; rather, it was sent to the Chairman of the Oklahoma Commission, and I received a copy of it, and they employed me, the Oklahoma Commission employed me as it'—engineer. In that position I had charge of the telephone department. The Oklahoma Commission had general supervision,—jurisdiction over all kinds of Public Service Corporations within the State, both companies that were operating wholly within the State or that were termed Inter-State. There were several of those Companies, such as the Western Union, the Postal, and Pioneer Telegraph and Telephone Company, that is, of the wires. I remained with that Commission five years and a half in the same position as Telephone and Telegraph Engineer, at which time I accepted a similar position with the Missouri Public Service

Commission. The Oklahoma Commission was a newly created body that had just started. The Constitution of that State had just been ratified and the Commission was a Constitutional Body, that is, it was put into office through the Constitution, I had charge of the Telephone and Telegraph Department, as I stated above, and there investigated the rates, charges, rules and regulations of all companies within the State of Oklahoma. The Pioneer Telephone Company was the largest individual Company. It had, I believe, 117 different exchanges within the State's toll lines, connecting all those exchanges, the largest exchange being the one at Oklahoma City, and there was Muskogee, Tulsa, Bartletttsville, Guthrie and towns of smaller size. Enid should have been said in there, because

1084 the first question that *that* come up in regard to rate matters was in the Enid Exchange. I took an actual field inventory of that property, made an appraisal out of which grew the celebrated case of *Westonhaver vs. the State of Oklahoma Public Service Commission*. During the five years I was connected with this Oklahoma Public Service Commission, I was engaged in such work as making and checking inventories and making appraisals of telephone properties through the State,—I made something like thirty or forty actual field inventories of different properties. The property at Enid, property at McAlester, Guthrie and Ada. One or two others that I can't recall now of the Pioneer Company and several Independent Companies. I also got up a system of reports or rather the Commission got up an order requiring the Companies to submit to it valuations of their properties, complete reports on a form prescribed by the Commission. Now, I got up those forms, and they were sent out to the Companies and they submitted to the Commission an actual appraisal inventory of all their properties. There were thirteen hundred off Independent Companies in the State of Oklahoma, and the 117 Bell Exchanges, and in the five and a half years that I was there I checked practically all of those Companies through their reports. The total valuation of those Companies would be in the neighborhood of twenty-five millions of dollars' worth of property, that is, all telephone property.

I accepted the position of Engineer, Telephone and Telegraph Engineer for the Missouri Commission in March 1914. That was strictly engineering problems. That Commission had only
1085 recently been established by the passage of the law in 1913 and the first case that they had of any moment was the St. Louis Bell Telephone Case. They wanted an engineer to make an appraisal of the plant in St. Louis and selected me to do that work. That was about a nine million dollar property. I made an appraisal of that property had two assistant engineers and a clerical force with me on that work. In addition to that property there were numerous other properties to be valued such as the Springfield, Missouri, Exchange, which was quite a large exchange, and ran over a million dollars,—property at Kirksville, Marshall and St. Joseph and several others that I can't recall right now, ranging in size from \$50,000.00 up to half a million dollars in size. Also Fulton, I remember. I occupied that position from March 1914 until October 1918 and dur-

ing all the time that I was connected with the Commission I was engaged in appraisal work, engineering work, for two years until 1916, at which time the Commission made me Chief of the Telephone and Telegraph Department. I had then a similar position that I did with the Oklahoma Commission, that is, the direct supervision of all rates, rules and regulations of the various telephone and telegraph companies under the supervision of the Commission.

I left that Commission in October 1918 to fight Germany. I went into the Army and I was in the Army about eleven months in the Signal Corps branch of the service. I accepted a Commission 1086 of First Lieutenant. That was the 27th day of September, 1918. I had previously been offered a higher commission, but at the time it was offered I could not leave the Commission. I had several cases on hand that had to be completed and so I turned it down. The commission I turned down was that of Major in the Signal Corps.

I got to France, let's see, 25 days after I was commissioned. I did not go to the training camps, having had previous military experience and was stationed first at St. Nazarre in charge of telephone and telegraph operations at Base Section No. 1. I stayed there, I think, from the 4th or 5th of October,—of November, until the 24th of November, when I was sent to Tours, the general headquarters of Service and Supply. I was placed in charge of the telephone and telegraph operations at that General Headquarters, having 35 operators,—American girl operators and a service company of six hundred men under my supervision. I had supervision of all of the telephone and telegraph operations. I constructed and maintained telephone lines and such as that,—that was part of my work. I had about 180 telegraph operators. I had about seventy line men, repair men, and the balance of the men were all classes and general utility men, such as cooks, etc. that go to make up a company in the Army. I remained as Lieutenant until May of 1919 and was then made captain. At that time I was signal officer of the District which is known as the Arrondissement of Tours. That would be the District of Tours. That extended from Orleans or as it is regularly pronounced Orleans to Tours and to Nantes on the west and embraced an area of approximately 75 square miles.

1087 My position was that of Signal Officer and was practically the same class of work I had been doing. I had charge of telephone and telegraph lines and so on and that position gave me entire charge of the District.

When I got back from France, I resumed my duties with the Missouri Public Service Commission. Things were not as I would liked them to have been at that time, so I decided to go into business for myself and resigned from that Commission the first of October 1919. I then started into this work as Valuation Engineer. While I was with the Army cannot be counted, so I was with the State Commission ten years,—State Public Service Commissions of Oklahoma and Missouri. In that position I had occasion to appear frequently in rate cases; I think I have appeared in over a hundred rate cases before both Commissions.

It would be pretty hard to say how many telephone properties I have made appraisals of during the length of time that I was connected with these Commissions. I have previously stated that there were thirteen hundred odd Independent Companies in the State of Oklahoma, that I checked the property value of their reports submitted; and one hundred and seventeen Pioneer Exchanges; about eight or nine of those I took actual field inventories of and made the actual appraisal of and then with the Missouri Commission an appraisal of a St. Louis plant, Springfield, Fulton, Marshall, Caruthersville.

1088 In estimating the value of the property which I appraised while I was connected with these Commissions, I want to include in that three other appraisals I assisted in. One was the Kansas City Electric Light and Power Company, a property of about seven and a half million dollars; I appraised all the underground and pole line system of that company; also, the St. Louis County Water Company; that was about a million and a half dollar company, and the Sedalia Water Company, a smaller company of about half a million dollars, and also made an appraisal of the Home Telephone Company of Joplin, Missouri, which I took a field inventory of and made an appraisal. That was a plant of about \$600,000.00 and I should judge that in actual appraisal work that I have appraised something like thirty millions of dollars worth of telephone property, and of electric light, water, gas and other telephone properties, and have either taken part in appraisals or checked the appraisals of twenty millions of dollars—about fifty millions of dollars in property, I guess.

Mr. J. D. Frank: As touching upon the qualifications of Mr. Player, I would like to read a couple of extracts from the decision of the Supreme Court of Oklahoma, in the case of the Pioneer Telephone & Telegraph Company vs. Westenhaver,—reported in the 33rd Oklahoma Reports, at page 226; 99 Pacific Reporter, page 1019. Mr. Player made the appraisal in that case and in one place the Supreme Court says:

1089 "The estimates of Mr. Player have generally been adopted by all the parties to this proceeding and we are not disposed to reject his estimate of the cost of reconstruction exclusive of the expense of piece meal construction working capital of old plant and interest in investment during construction."

In another place the Court says:

"Mr. Player, the telephone expert of the Commission, who throughout the proceeding has demonstrated himself to be proficient in telephone construction and operation and whose fairness is attested by the fact that his opinion and estimate, wherever the same were given, were adopted by all parties, did not testify on this question and was not questioned relative thereto."

The Court was speaking of depreciation there.

On the basis of my appraisal I have made an estimate of the an-

nual reserve for replacements which should be set aside to take care of those matters and that is shown on page 54. The only explanation that I can see necessary for this table is the fact that we have in the first column the depreciable property, physical plant in place representing an amount of four million seven hundred and twenty-one thousand, four hundred fifty-nine dollars; that is the average composite life of the various classes of plants shown in the 1090 table, which are sixteen, is 15.55 years; that it will require the amount of \$303,627.00 per annum to keep that property at its value of one hundred cents on the dollar or 6.43 per cent of the depreciable property.

The per cent of salvage as shown opposite the items is the estimated amount of money, or per cent of money, being shown in column three, that you would be able to secure out of any class of this plant if it were sold for junk. The wearing value in column four would be the expectancy of duration, the wearing value or service giving value of each part of the plant, the salvage or junk amount having been deducted. Now, in column five we have estimated life in years of each class of property. The buildings, that is the first item of buildings, steel and concrete construction would have a life of 50 years, it is estimated,—in the next column we would have the number of times in 50 years it would be necessary to renew one of these buildings, which would be one time, or a total expenditure in 50 years of \$539,114—the same is true of all the other items of plant, showing the life, estimated life and the number of times each class of plant would have to be renewed during the estimated life of the property on the basis of the 50 year period. We get in column seven, the total expenditure, that is the next to the last column, the total expenditure which would be necessary in this plant should each part of the plant be renewed the number of times as shown in the preceding column, column six is a total of of 1091 \$12,813,594.00. In order to make that a comparable statement, and put all of the classes of plants on the basis of the 50 year period we then have the last column which represents the dollars years; that would reflect the composite expenditure in 50 years of all the class of plant; that would represent a figure of \$199,353,390.00, which divided by the figure of column 7, that is the total \$12,813,594.00 would give us the composite life of the entire property of 15.55 years. That is what I was working up to. You could work this out in percentage; some engineers do that and say that aerial property—your subscribers equipment is so much, your cable is so much per cent; I have used this method for several years in all of my cases and I duplicated it in this case. There is nothing catchy in it; it is a mere estimate of the composite life of the property as a whole.

Q. Well, what is the annual reserve for replacements designed to cover? I know you say that it is to take care of lessening in value of the property, or to keep it up to one hundred cents on the dollar. Mention some of the things which causes your property to lessen in value and which renders it necessary for you to set aside a reserve of this kind.

A. Replacements of pole line or other equipment destroyed by storms or fires. We have a good example of the expenditure that was necessitated down here at Corpus Christi a short time ago, and Galveston a few years ago, and then a few years previous to that when the whole town was practically wiped out.

1092 I knew that the storm of 1915 occurred in Houston. That was the storm that was prevalent all over the west and I understand you had a big storm here and throughout west Texas that destroyed a great deal of property, and into this comes the obsolescence of certain classes of equipment of the plant.

Cross-examination.

(Questions by Mr. Howard:)

Q. Mr. Player, do you—this figure of \$12,813,594.00, I believe is the total amount of money you estimate will be spent in 50 years for the purpose of replacing the plant and keeping it up?

A. Yes, sir, on the basis of the estimated life, and the number of times each class of plants would be renewed using as a basis the 50 year life of the building, and the years' life period of the plant.

Q. Now, to get the expenditure, average expenditure, for one year, you would divide that by 50?

A. No, sir.

Mr. J. D. Frank: I raised that same question.

A. I had a hard time explaining that to Mr. Frank the other day.

(By Mr. Howard:)

1093 Q. Al- right. Let's hear that if there is anything that Mr. Frank does not under-stand.

A. No, sir, it would not reflect it to take any individual item there and divide it and take one fiftieth of it, which you have in mind—

Mr. J. D. Frank: (Interrupting.) Why wouldn't it?

A. Because, you wouldn't have the composite life of the plant represented in anyone individual item in order to make this comparable.

(By Mr. Howard:)

Q. But when you replace it several times that equalizes that fact that the individual part of the plant ain't the same?

A. Yes, sir, but to get the composite figure with all the different parts of the plant, you bring it into a composite figure, the total of which would represent a one-fiftieth part which in this case is the total of Column 7, divided into the total of column 8, and would give you the 15.55.

Mr. J. D. Frank: If you didn't do that you would give undue weight to certain parts of the plant?

A. You give undue weight to a certain part of the plant—to certain parts of the plant.

(By Mr. Howard:)

Q. Because they are replaced one time and some of them three or four times?

A. Some are replaced as many as ten times.

1094 Q. But your total expenditure in 50 years, you have by replacing them several times as was done here, doesn't that have the effect of equalizing those different parts of the plant?

A. No, sir, not until you carry it further and carry each one of the items and multiply it by the average life in order to make it comparable with the 50 year life.

Q. Now, then, Mr. Player, how do you arrive as to the annuity that should be kept up for those parts, how do you get them?

A. You find the life in years which is 15.55 years, you divide your first column on the page the amount of depreciable property \$4,721,459.00 by 15.55, which will give you \$303,627.00 or what per cent that bears to the total.

Q. But the average life of—the average composite life——

A. (Interrupting.) Average composite life.

Q. Is the average life?

A. Yes, sir.

Q. Is fifteen years,—and you divide the total value of the plant undepreciated by that to get your annual annuity?

A. Yes, sir, which is the percentage and would be 6.43 per cent.

Q. \$303,627.00 then, is 6½ per cent, is it, have you verified that?

A. 6.43 per cent.

Q. Of the depreciable items that is correct?

A. Yes, sir, you can apply that percentage on items already
1095 depreciated.

Q. Well, I understand, what you deduct then is the depreciated annuity 6.4 plus is what you deduct as annuity per cent?

A. Yes, 6.43, yes, sir.

Mr. Howard: I believe that is all, but I still think there is some doubt about the other;—it may be right.

1096 Mr. GEORGE P. PLAYER, a witness for Plaintiff testified as follows:

Direct examination.

Questions by Mr. J. D. Frank:

Q. Now, have you made an estimate of the annual reserve for replacements which should be set aside to take care of those matters?

A. On the basis of my appraisal, yes, sir.

Q. That is shown on page 54, is it?

A. It is.

Q. Will you take up that page and explain it to us?

A. The only explanation that I can see necessary for this table is the fact that we have in the first column the depreciable property, physical plant in place representing an amount of four million seven

hundred and twenty-one thousand, four hundred fifty-nine dollars; that is the average composite life of the various classes of plants shown in the table, which are sixteen, is 15.55 years; that it will require the amount of \$303,627 per annum to keep that property at its value of one hundred cents on the dollar, or 6.43 per cent of the depreciable property.

Q. Well, now, I wish you would explain that to us a little more in detail. You have, for instance, a column of per cent of salvage, net salvage value, then wearing value etc. Go ahead and explain that to us?

A. The per cent of salvage as shown opposite the items is 1097 the estimated amount of money, or per cent of money, being shown in column three, that you would be able to secure out of my class of this plant if it were sold for junk. The wearing value in column four would be the expectancy of duration, the wearing value or service giving value of each part of the plant, the salvage or junk amount having been deducted. Now, in column five we have the estimated life in years of each class of property. The buildings, that is the first item of buildings, steel and concrete construction would have a life of 50 years, it is estimated. In the next column we would have the number of times in 50 years it would be necessary to renew one of these buildings, which would be one time, or a total expenditure in 50 years of \$539,114. The same is true of all the other items of plant, showing the life, estimated life and the number of times each class of plant would have to be renewed during the estimated life of the property on the basis of the 50 year period. We get in column seven, the total expenditure, that is the next to the last column, the total expenditure which would be necessary in this plant should each part of the plant be renewed the number of times as shown in the proceeding column, column six is a total of \$12,813,-594.00. In order to make that a comparable statement, and put all of the classes of plants on the basis of the 50 year period we then have the last column which represents the dollars years; that would reflect the composite expenditure in 50 years of all the class of plant; that would represent a figure of \$199,353,390.00, which divided by the figure of column 7, that is the total, \$12,813,-1098 594.00 would give us the composite life of the entire property of 15.55 years.

Q. That was what you were working up to find out?

A. That is what I was working up to. You would work this out in percentage; some engineers do that and say that aerial property—your subscribers' equipment is so much, your cable is so much per cent; I have used this method for several years in all of my cases and I duplicated it in this case. There is nothing catchy in it; it is a mere estimate of the composite life of the property as a whole.

Q. Well, what is the annual reserve for replacements, designed to cover? I know you say that it is to take care of lessening in value of the property, or to keep it up to one hundred cents on the dollar. Mention some of the things which causes your property to lessen in value and which renders it necessary for you to set aside a reserve of this kind?

A. Replacements of pole line or other equipment destroyed by storms or fires. We have a good example of the expenditure that was necessitated down here at Corpus Christi a short time ago, and Galveston a few years ago, and then a few years previous to that when the whole town was practically wiped out.

Q. The storm of 1915 in Houston, do you know anything about that?

A. Yes, I knew that occurred. That was the storm that was prevalent all over the west and I understand you had a big storm here and throughout west Texas that destroyed a great deal of property, and into this comes the obsolescence of certain classes of equipment of the plant.

1099 Mr. Howard: Mr. Frank, that thing has gone into the record several times.

Mr. J. D. Frank: I thought if I did not bring it out you would think he did not know anything about this.

Mr. Howard: I would not carry my suggestion that for.

Mr. Frank: I have no more questions to ask Mr. Player.

Cross-examination.

Questions by Mr. Howard:

Q. Mr. Player, do you—— This figure of \$12,813,594, I believe is the total amount of money you estimate will be spent in 50 years for the purpose of replacing the plant and keeping it up?

A. Yes, sir, on the basis of the estimated life, and the number of times each class of plants would be renewed using as a basis the 50 year life of the building, and the years' life period of the plant.

Q. Now, to get the expenditure, average expenditure for one year, you would divide that by 50?

A. No, sir.

Mr. J. D. Frank: I raised that same question.

A. I — hard time explaining that to Mr. Frank the other day.

(By Mr. Howard:)

Q. All right. Let's hear that if there is anything that Mr. Frank does not understand?

A. No, sir, it would not reflect it to take any individual item there and divide it and take one fiftieth of it, which you have in 1100 mind——

Mr. J. D. Frank (Interrupting:): Why wouldn't it?

A. Because you wouldn't have the composite life of the plant represented in any one individual item in order to make this comparable.

(By Mr. Howard:)

Q. But when you replace it several times that equalizes that fact that the individual part of the plant ain't the same?

A. Yes, sir, but to get the composite figure with all the different parts of the plant, you bring it into a composite figure, the total of which would represent a one-fiftieth part which in this case is the total of column 7 divided into the total of column 8, and would give you the 15.55.

Mr. J. D. Frank: If you didn't do that you would give undue weight to certain parts of the plant?

(By Mr. Howard:)

Q. Because — are replaced one time, and some three or four times?

A. Some are replaced as many as ten times.

Q. But your total expenditure in 50 years, you have by replacing them several times as was done here, doesn't that have the effect of equalizing those different parts of the plant?

A. No, sir, not until you carry it further and carry each one of the items and multiply it by the average life in order to make it comparable with the 50 year life.

Q. Now, then, Mr. Player, how do you arrive as to the annuity that should be kept up for those parts, how do you get them?

1101 A. You find the life in years which is 15.55 years; you divide your first column on the page the amount of depreciable property \$4,721,459.00 by 15.55, which will give you \$303,627.00 or what per cent that bears to the total.

Q. But the average life of,—the average composite life—

A. (Interrupting.) Average composite life.

Q. Is the average life?

A. Yes, sir.

Q. Is fifteen years, and you divide the total value of the plant undepreciated by that to get your annual annuity?

A. Yes, sir, which is the percentage and would be 6.43 per cent.

Q. \$303,627.00 then is 6½ per cent, is it, have you verified that?

A. 6.43 per cent.

Q. Of the depreciable items that is correct.

A. Yes, sir, you can apply that percentage on items already depreciated.

Q. Well, I understand, what you deduct then is the depreciated annuity 6.4 plus is what you deduct as annuity per cent?

A. Yes, 6.43; yes sir.

Mr. Howard: I believe that is all, but I still think there is some doubt about the other; it may be right.

1102 Mr. CHARLES A. GATES, a witness for plaintiff, testified as follows:

Redirect examination.

Questions by Mr. J. D. Frank:

Q. Now, Mr. Gates, there is one other matter that I want to cover with you. Have you worked out the necessary amount of money that has to be set aside to take care of your Annual Reserve for Replacements?

A. I worked out the percentage that would be required, the plant value—

Q. What page is that on?

A. On page 251.

Q. That is page 251 of your appraisal, is it?

A. Yes, sir.

Q. All right, will you take that up and explain it to us now?

A. In the first column appears a list of the different kinds of property in the plant. In the next column is the Annual Rate of Reserve necessary to protect that property, as for instance, in the case of buildings, $2\frac{1}{2}\%$. In the next column is the per cent of the total reproduction cost that that class of plant bears to the total physical property. In the case of buildings, they represent 10.72% of the total plant, $2\frac{1}{2}\%$ multiplied by 10.72% gives us the Annual Rate of Reserve, the equated annual rate of reserve, which is shown in the third column and that in the case of buildings amounts to .268 of one per cent and the same plan is carried out for each part of
1103 plant and the total equated annual rate of reserve is shown at the bottom of the third column and it amounts to 6.267.

Q. Now, that is Six and—

A. 6.367%.

Q. That is of the total physical property?

A. Of the total physical property.

Q. Why is it necessary to have a reserve of this kind, Mr. Gates? In a few words, tell us what it covers.

A. It covers the decay, rot, rust and decay of the property, obsolescence, inadequacy, storm damage, fire damage, in fact, in a nutshell it is reserved to replace your plant when it becomes necessary to do so for any cause whatever.

1104 Direct examination.

Questions by Mr. Howard:

Q. Now, Mr. Kelsey that brings us to the matter or reserve for depreciation, change in Art, etc. How did you arrive at the deduction?

A. I have written here a little analysis of it for the sake of brevity. Could I read that into the record. I would prefer to.

Q. Yes, it might be safer than to testify to it.

Mr. D. A. Frank: What page are you reading from?

A. The bottom of page 2. "Item 2 is the depreciation figure allowable to the Houston District—it covers both local and toll conditions chargeable to Houston—it is \$146,120.

We all know the depreciation exists. We know that there are things which human ingenuity cannot maintain and which will have to be given up.

The telephone business is nearly forty years old, and has grown from a few select subscribers to 12,000,000 subscribers in our country alone, and it has encountered all the pangs of growth and birth, and all the forces of nature as well.

We have had inventions, storms, fires, floods, and quakes, and the business goes on constantly autmenting itself.

Like Insurance Companies, which can ever calculate the exact life of a man, the number of accidents or fires he will have, telephone companies have every reason to be satisfied that the experience of forty years will give the best predication of the future.

We can conceive of a change in a switchboard, of an alteration of a building, but no threatened change of telephone practise in our lives affects the more expensive parts of a telephone system, such as real estate, ducts, cables, wire and poles.

Telephone companies larger than Houston have already made the radical changes to the automatic system.

Counting up every change in the art, every fire, flood, cyclone and earthquake, and counting up every telephone in use since 1880, it is found that the total average cost of maintaining a telephone system, both local and long distance, in its present highly efficient condition, has averaged \$11.00 per telephone station year.

1106 A study of the maintenance of the highly efficient Houston system shows an average cost of \$5.38 per telephone station year.

It is obvious that since 40 years' experience has shown that \$11.00 per station year has kept up every telephone in America all those years, the Houston telephone property and toll property chargeable to it can be given as a maximum the difference between \$11.00 per station year and \$5.38, or \$5.62.

As there was an average of 26,000 stations in Houston used by local and toll users, the maximum depreciation reserve chargeable to Houston subscribers would be \$146,120.00.

One of the best examples of a proper reserve charge has been shown by the Keystone Telephone Company of Philadelphia, serving over 30,000 users. In 1905 it was decided to adopt the difference between \$11.00 per year, and the actual cost of current, maintenance, and reconstruction of \$7.00, and put \$4.00 per station year into a reserve fund, and credit it with prevailing interest rates.

1107 Last year, the Company decided to change to automatic telephone service, and it is a matter of interest to say that the company has enough reserve money to pay all charges and have some left. It must be remembered that a reserve fund cannot cover all expense of a new system, because some of the new work is chargeable to capital account. Houston is in a country which has milder weather and the troubles of Northern weather are unknown.

A reserve of \$5.62 is certainly a maximum load to be carried by the Houston subscribers.

Getting back to the telephone situation as a whole, the whole Bell Telephone System has a reserve of \$300,000,000 on a \$1,000,000,000 property, which has been set by charges of less than \$3.00 per station, and that included tolls, buildings, local plants and all.

Experience alone is the great teacher, and we know that the gift of prophecy died out centuries ago. Why not give Houston the benefit of experience and not impose upon it the guess work of prophecy.

There are further considerations of depreciation. If the Company insists upon confining itself to reproduction new theory, and practically taking a profit of \$4,000,000.00 out of Houston, it is 1108: doubtful whether Houston subscribers owe them or should owe them any money for the wear and tear of their properties in the future.

This profit of \$4,000,000 will take care of all losses for years to come, especially, since the Houston Company has been in existence some 30 years, and their property is in a 93% state of perfection according to their engineers.

All that imagination can picture is that Houston subscribers really owe the company for that 7% loss and no more.

In other words, capitalistic practise limits the reserve at \$280,000.00 at this time. But the Company has claimed a loss of \$1,374,249.00 for the past four years and has especially asked for \$359,999.00 for 1919. If this rate is kept up it is and will be more so a situation which reminds one of eating his cake and having it too.

And if Houston were a decadent city, such an attempt would be justifiable. But Houston and Houston people are rated AA-1.

Mr. D. A. Frank: That is 1-A higher than you rated Cleveland?

A. I don't know how that got in there.

1109: Mr. D. A. Frank: I understood you rated Cleveland A-1, can you make the same statement there?

A. Not this statement. "This naturally leads to the question of the fairness of making an AA-1 customer pay in full and in advance. I can conceive of asking an AA-1 customer to pay something down, but all in advance for something which he may or may not get is a little bit dubious.

It is unreasonable to conceive of a situation whereby the Company having incurred a real expense, can go before Court or council with a bill of particulars and agree at once on an amortization plan.

We have another war, but a sale of bonds based on that war would not be successful. We are paying for the last war, and know it.

A public utility, having a constitutional guarantee, which asks everything in advance, shows little faith in the Government."

I think that last is a little bit raw.

Mr. D. A. Frank: Who guarantees that?

A. It is constitutional.

1110: Q. Guaranteed?

A. Guaranteed that you can ask for it and get it. If you don't, you fall.

Q. Now, you have determined the rate of depreciation, I don't know whether you call it a rate, but it is largely upon the past experience and actual knowledge of depreciation based upon telephones all over this country which you find to be about \$11.00, which bears maintenance and annuity for amortizing the plant?

A. By making a study of this ever since 1905.

Q. It has been suggested here some time or another, that there are certain elements of this plant, that the affects of this climate cause the wire to corrode, or the insulation to come off. Assuming that as a fact, are there any compensating—are there any troubles that are distinctly peculiar in the Northern climate?

A. No.

Q. How does that *it* affect it?

A. Uplifting of line. We have a record of the exact expense of handling all those.

Q. You have?

A. Yes, sir, in this report, it is right here, the cost of maintaining and keeping these properties.

Q. Have you ever made a study of the rate of depreciation 1111 that should apply to the different parts of the plant?

A. I never have.

Q. This was based entirely on the number of telephones and the amount per station that experience has shown to be required?

A. Finance and investment practically insists upon experience rather than prediction.

Q. If it is suggested to you that there are various conditions throughout the country and a thing might—an amount to keep up a plant in Canada might be entirely inadequate for this part of the country, had you given that matter any consideration?

A. Not in this case. But that has been taken into consideration. Every flood, every fire, every casualty known in the telephone business that has taken place in the last 40 years, and we predicate this experience on that.

Q. Is there anything about the climate—you are familiar with this southern climate?

A. Not very much, no sir.

Q. A good deal of rainfall, and a good deal of heat, would that make any radical change in this question of depreciation?

A. No sir, not radical.

Q. Mr. Kelsey, how would the higher prices, when you 1112 compute that upon the basis of telephones or per station, and not upon a percentage basis, how would the advance in the prices of material be provided for and taken into consideration in setting aside this reserve—in other words this reserve isn't spent today or tomorrow?

A. It is here until needed. I have every reason to believe that as we grow older we put more of our property under ground. We know more about the business and protect it better. We know more about lights and have to contend with the forces of nature and I think it is entirely offset by these advanced years.

Q. The high cost of material and labor might add a direct bear-

ing upon the maintenance, annual maintenance of a plant, as provided under the Rules of the Interstate Commerce Commission, which might be in 1919 than in 1914 on account of the high prices?

A. Yes sir. 1919 with all these high prices shows \$5.38.

Q. But 1919 \$5.38 is based upon the prices of that year?

A. Yes sir.

Q. And that to your mind evidences the fact that this difference between that and \$11.00 would also be sufficient to take care of the reserve even considering the high prices?

A. That would satisfy me and my client the banker who looks upon this property from that standpoint.

1113 Q. If prices again go to normal or pre-war prices or approach to that extent then there would be really less required for the maintenance of this plant and also less in the annual annuity reserve?

A. The lower the maintenance goes, the higher this reserve would be.

Q. Speaking from the physical standpoint?

A. Yes sir.

Q. But I am speaking from cost. If the price of 1919 drops down to approach the prices, the pre-war level, a drop from that would not effect the amount of the annuity reserve?

A. It would increase it. The lower your maintenance expense, the higher your reserve is.

Q. Let me see, I think you and I are a little confused about this.

Mr. D. A. Frank: You are confused, Mr. Howard. I think Mr. Kelsey is clear.

Mr. Howard: I am going to find out about it.

Mr. D. A. Frank: I think it is as clear as a bell.

Q. I think he is on both things myself. Here is the idea. I have never talked to you about it and I don't know, but it occurs
1114 to me that this rate is set up in 1919 as the actual maintenance cost, that is not a theory, it is cost?

A. Absolutely cost.

Q. Then prices of maintenance, material and labor go down next year and the plant is kept up just as well physically next year, it will cost them less to keep the plant up in as good physical condition?

A. Yes sir, that is right.

Q. The fact that they pay less next year for keeping this plant up, well maintained, as well as they have done it this year, why would that have any effect or tend to increase the annuity reserve?

A. Because we are basing our whole proposition on the fact—

Q. (Interrupting.) Going to allow—you are going to allow that \$11.00.

A. Yes sir, until we know better.

Q. What you mean is they would realize a greater depreciation reserve whether they would actually need it or not?

A. Yes sir, when these prices go down, the reserve goes up. It is all a matter of computation. We have studied it, not to fool our-

selves. I put that plant in in 1905, and put the securities with innocent purchasers in Holland, and we have a reputation to sustain, and we decided that the difference——

1115 Mr. D. A. Frank: Did you say ever since——

Mr. Howard: Let's cut that out, just proceed, Mr. Kelsey.

A. We had our reputation to sustain and we decided that the difference was a safety factor. It has proven so, and the fifteen years have gone by and they have made this radical change, they have put in the automatic and they have got the money.

Q. And that rule has actually held through 40 years?

A. Yes sir, that \$11.00 rule. That is a matter of computation. In our study of this thing to be sure of putting into this property I spent a great many weeks studying that thing, as to what that reserve should be.

Q. From your experience as a practical telephone man and from your knowledge of this subject, I ask you what your opinion is of this amount that this company set up here for this annual depreciation?

A. I think it is enough to protect it.

Q. I am talking about the amount the company set up?

A. About what they set up?

Q. Yes sir?

A. That is too much.

Q. It is excessive?

A. Excessive.

Q. To what extent?

A. If carried on it would soon amortize the property.

1116 Q. And is excessive over and above this figure you gave here?

A. Yes sir.

Q. You spoke of the Keystone Company of Philadelphia. Is that a strictly conduit system?

A. Not altogether, I should say about 85%.

Q. What would you call this system here, a heavily conduited system or just slightly?

A. This is a typical well preserved property, and I wouldn't say exactly. That is a matter of computation.

Q. A matter of computation?

A. Yes sir, but from what I have seen it is a nice property.

Mr. D. A. Frank: Have you seen it.

A. Yes sir, I have driven over it and looked at it as near as I could without breaking into your building.

Mr. D. A. Frank: We have invited you.

A. I didn't, because I know what is in there. I have installed them.

Q. There is a great deal of conduit in this city?

A. Yes sir.

Q. There is a considerable amount of Aerial cable in the Keystone plant?

A. Yes sir, quite a little.

Q. Does it serve any part of the city of Philadelphia outside of the business district?

A. Yes sir, up to Germantown and Chester and places like that, Camden.

Q. What has been the experience there on this \$11.00 per station for annuity and maintenance?

Mr. D. A. Frank: He has told that two or three times.

Q. I want to know?

A. At that time we found with the current maintenance of that property it averaged about \$4.00 per year, and they have what they call current reconstruction. The total was \$7.00—

Q. (Interrupting.) I understand. What result would they get, how much money would they get in that reserve?

A. They have been putting that money out at 6%, loaning it themselves, and for a while they bought their own company bonds. They were 5% bonds. I haven't been down there for two years to know what the reserve amounts to, but that could be determined from their annual report, but I understand it is sufficient to take care of the property.

Q. Have you had any observation, or experience or knowledge of any other company that set up their depreciation upon that basis?

1118 A. In every property I deal with I put them on that basis.

I put the North Dakota Independent Telephone Company on that basis in 1906.

Q. How did that work out?

A. At that time the maintenance was about \$4.50. Their reconstruction—we had \$1.00 per year per station for sleet, which in the six years—we had \$3.00 for current reconstruction reserve. The difference between that \$11.00 was in cash which invested in securities and as the years went on that Company was absorbed by the Bell Telephone Company and of course since 1910 they naturally don't let me patrol it as I did for four years.

Q. How does a telephone property, such as this, from the standpoint of deterioration compare with any other public utilities?

A. About the same, pretty nearly all the telephone companies are in a condition of 90% good. They have to be.

Q. You didn't get my question. I asked you how it compared with other utilities such as street car companies, traction companies and gas companies, have you ever made any comparison as to those things?

A. Not for a great many years. The telephone business usually is in a class by itself.

Q. Is it very easily destructible property?

1119 A. The telephone property is made up of a great deal of stable material, steel and german silver, oak, mahogany, platinum. The platinum that was used over this plant probably cost \$10.00 per ounce, and the Bell Company has been very liberal with platinum, and today it is worth \$130.00 an ounce. There is leather in these boards, and there is silk.

Q. Do those things deteriorate rapidly?

A. No sir, they do not. There is not so much deterioration.

Q. Is very much deterioration in underground conduit?

A. Literally none.

Q. Almost none in a well constructed building like this Preston plant over here?

A. That should be a monument to life for one hundred years.

Q. So getting down to these facts of depreciation, it is a small item as compared with the set up of 6% or 7% for depreciation?

A. In that 6% assumption, they assume the property will die. The telephone business is an immortal business. The manager may die and the superintendent may die, but one hundred years from now, there will be a telephone building devoted to the telephone service and there will be poles holding these cables at certain places.

Q. But poles do wear out?

A. Yes sir, but they will be replaced, and they have been replacing them for 40 years.

1120 Q. That is what I want to get at. When we speak of depreciation as I understand it, if a pole wears out you have got a fund to take care of that pole?

A. Yes sir.

Q. I am just trying to see that our minds run together all the way along here. I can understand, for instance, if you put a conduit in the ground here it will last, like perhaps back in Rome and Egypt they were put in the ground and they are there yet in good condition, and you put them in the ground here and they will stay there and not deteriorate at all. That is one thing I can see where there would be no deterioration and any that would be attached to it would be largely imaginary and has been so done for the purpose of rate — going into something for good measure and that sort of thing, but when we come to poles, poles do wear out?

A. Yes, sir.

Q. There has to be some sort of depreciation allowed for those things, to replace them when they wear out?

A. That is taken care of currently.

Q. What I am getting at is there are parts of this plant that are practically permanent and indestructible, and there are some parts that are somewhat rapid in deterioration. You wouldn't mention poles and conduit in that class?

1121 A. No sir. I dug up poles in Duluth that were put in 22 years ago and they were yet in perfect condition.

Q. Good experts for rate hearing and telephone owners can build up a nice little theory that a pole life is about six to ten years, can't they, and get about 20% annual depreciation?

A. And they can probably prove that some poles last ten years. One may break tomorrow. It is our experience that they do break.

Q. Those percentages are largely estimates and uncertain quantities, but when you get right down to the actual deterioration for rot and decay there is very little of it there as compared with these percentages that are built up?

A. An estimate based on percentage is wrong because it is as

sumed the property is going to die. This property is immortal. As long as the people maintain the property there will always be a telephone property and it will be repaired and replaced as years go by.

Q. There are some things that happen, but not nearly so much as they can imagine?

A. My argument is entirely this that things have happened in the telephone business for 40 years. We have been in business for 40 years and have learned all those things.

1122 Q. And you say this small depreciation in your judgment, and from your experience, based upon your experience is ample to take care of those troubles?

A. This is no small depreciation; it is large and a good one.

Q. I mean that relatively speaking of course?

A. I consider that a rather vigorous depreciation.

Cross-examination.

Questions by Mr. D. A. Frank:

Q. You are one of the owners of the Keystone Company?

A. Yes sir.

Q. You are a stockholder?

A. Yes sir.

Q. The stockholders are the owners?

A. Yes sir, they ought to be. No, stockholders are not much owners as we found out in the Bell Telephone Company, for instance.

Q. You are familiar with your investment in the Keystone Company?

A. I could clean cut any time and make something like \$8.00 a share, and I have every reason to believe that I am going to get \$40. a share for it.

Q. Do you know whether or not the Keystone Company has been setting aside \$4.00 per station or \$11.00 a station, or any other certain amount as reserved for depreciation?

1123 A. That was their definite plan, the agreement under which the contract was made.

Q. That was the plan in what year?

A. 1905.

Q. Do you know whether or not they kept that up?

A. I don't know. I understand they have got plenty of money to take care of all changes in the art.

Q. Do you know whether or not they have set side \$4.00 for each station?

A. I have heard so, but the Keystone has been furtherest from my thoughts.

Q. You are a stockholder in it, and undoubtedly get an annual statement from it?

A. Every American stockholder knows enough to keep silent. You buy a little share of stock and it don't mean anything.

Q. Do you look at the annual statement?

A. I told you I read it every month.

Q. Did you notice——

A. I notice you have got a bale of pamphlets here, suppose you look through and enlighten us all.

Q. Do you know whether or not six or eight years ago that company set aside in one year something like five hundred thousand dollars?

A. I don't know.

Q. To add to the reserve for depreciation?

1124 A. I don't know.

Q. I am asking you because you admit you know all about that company?

A. No sir, I don't admit anything like that.

Q. Didn't you make the statement a few minutes ago that they had a very ample reserve for depreciation?

A. That is what I was told, I think, in the stockholders' letter enclosing proxies, that everything was in very satisfactory condition.

Q. That is the usual kind of annual statement sent out to stockholders by every company?

A. No sir, I have seen them that didn't have any such wonderful statement as that.

Q. How much reserve have they at the present time?

A. I don't know.

Q. Do you know what the capital account of the company is at the present time?

A. No sir.

Q. If they have twelve million dollars in capital,—I don't know, have no idea what it is, but if they have twelve million dollars of capital, what in your judgment ought they to have in the reserve for depreciation?

A. What they have. That is what we set aside and decided as a contract on which we invested the money in this property.

1125 Q. If they have one million, or one million and a half in the reserve for depreciation, would you say that would be sufficient?

A. I don't know.

Q. Do you know anything about what a sufficient reserve for depreciation for that company is?

A. The amount necessary to keep the property at par.

Q. Have you any idea at all about what would be sufficient to keep it at par?

A. Yes sir, what it would cost your company to keep it at par if you want to get into that. I have your own statement. I am going to read this into the record before we get through.

Q. Answer my question, you can put that in later?

A. This is in answer to your insinuation, or whatever it is.

Q. No sir, no insinuation, merely trying to get the facts. In the Keystone Company you say you don't know how much they have got in the reserve for depreciation, but you have heard it is sufficient?

A. Yes sir.

Q. You give your professional opinion that it is sufficient?

A. If you will give me a half a day to look into it, I can tell you.

Q. I merely wanted to get the record straight. I didn't want it to appear that you thought it was sufficient?

A. I am informed it was.

1126 Q. While we are on the reserve for depreciation, do you think that a pole, a line of poles out here, that a reserve ought to be set up against that line of poles, because we know it will eventually have to come down?

A. You have got a reserve against your whole plant. I am giving you \$146,000.00 reserve for this whole property.

Q. I thank you for getting at something, but let's answer my question. If you have a line of poles here and you know that in the course of ordinary events that that line of poles would have to come down say in ten years—

A. (Interrupting.) They do not. There is always a pole line there.

Q. You can assume a proposition?

A. No sir, I will not, because we never have any time that the pole line does not operate.

Q. We will say there is a pole line out a certain street here in Houston beginning one half mile from the center of town and extending a mile down the street. The particular poles in that pole line will some day come down, won't they?

A. Everything dies and changes.

Q. How long will it be before that pole line in the ordinary course of events come down?

A. Never in your life time or mine.

Q. These particular poles?

1127 A. Quit talking about poles, talk about pole lines.

Q. I am talking about poles?

A. The pole line never comes down, but certain poles would come down. Poles are knocked down and broken off and struck by lightning. They have been struck and knocked down and worn out for 40 years, ever since we have been in the business.

Q. Let's stick to the question. Where is a line of poles a mile long, these particular poles or that pole line will sometime within the next fifty years, everyone will have to come down?

A. In the course of fifty years they will all probably change once or twice, or even more times.

Q. Do you know anything about the physical condition of the property here in Houston?

A. It is like all Bell Companies, they look very nice to me.

Q. Do you know what the annual rainfall is in Houston?

A. Around fifty inches.

Q. Something like seventy inches last year.

A. I don't know.

Q. Does rainfall have anything to do with the relative life of poles?

A. Yes sir, but we have had rain ever since the telephone business began.

Q. But that causes poles to rot?

1128 A. Yes sir.

Q. That is one of the things?

A. Certainly.

Q. If you had a line of poles a mile long, you would know that eventually you would have to replace them?

A. That is absurd to think you would not.

Q. You can save time by saying yes or not. What would be your judgment as to the average life in poles in this climate?

A. Your own experts have given it ten years.

Q. Have you have 17,000—

A. (Interrupting.) They give twelve years, even a higher life than switchboards.

Q. If you had 17,000 poles located in Houston, you would know you would have a part of your plant that within ten or twelve years at the outside that would have to be replaced?

A. The statement shows that during the year you spent \$19,000.00 on that very thing.

Q. Answer my question. For each \$100 of that pole line standing, you know you would have to replace in twelve years—you would have to have \$100 to replace the poles?

A. No sir, because you would be putting in new poles right along. You don't do the telephone business with the poles. Let's stick to the telephone system.

1129 Q. Let's stick to the poles for the time being. The pole line would wear out?

A. No sir, it does not wear out, because there is always a pole line there.

Q. We will get to that. The poles themselves wear out?

A. Some of them do, some get knocked off and some are damaged by lightning.

Q. They are taken down?

A. Changed, they are changed and another one put in their place.

Q. On an average of twelve years you would expect all those poles to be taken out?

A. I didn't say that, your expert says that.

Q. The experts say twelve years. If you establish a reserve to take care of that pole line, you would have to set aside 8% to do it?

A. No sir.

Q. Where would you get the money to put up the poles?

Mr. Howard: Don't you think the poles come out of the maintenance sum?

Mr. D. A. Frank: No sir, we do not, and you know we do not.

Mr. Howard: Aren't you permitted to do it under the rules of the Interstate Commerce?

1130 A. No sir, we are not.

Q. Answer that question, Mr. Kelsey. Are we permitted to put in poles and charge them to maintenance fund?

A. I told you all the time you were entitled to keep your investment in this town at par.

Q. Answer my question.

A. I answered it. You are allowed to keep your investment at par. That means when you require a pole line you don't have to assess your stockholders and bond holders. You have got the funds to do it with.

Q. Will you please answer the question. I asked you a simple question as to whether or not you could charge the poles to maintenance?

A. Certainly, what else could you charge it to, not to operating expense.

Q. Can you under the Interstate Commerce rules charge poles to maintenance?

A. You can do anything you want to.

Q. Do you know there is a very severe penalty for violating the rules of the Interstate Commerce Commission?

Mr. Howard: Look at them and see what it says about it.

A. I don't recall it now. It is a very clever arrangement made by the Company.

Q. Do you know anything about the Interstate Commerce Commission rules?

A. Yes sir, we publish them.

Q. Have you ever read them through?

A. Yes sir.

Q. Just tell us what the difference is between maintenance and depreciation as set up in the Interstate Commerce Commission's rules.

A. I don't care what is set up in the Interstate Commerce Commission's rules. Maintenance and depreciation is all in the same case. Go to any Nebraska Decision and find out what they are doing. If you are cross-examining me about something I am not interested in. I am approaching this proposition——

Q. You are on cross-examination.

Mr. Howard: Yes, and you are asking him, trying to hold an examination as to his knowledge of the Interstate Commerce Commission rules.

Mr. D. A. Frank: He said he had knowledge of them.

Mr. Howard: And you are examining him asking to construe those rules and I say you are consuming time and going into matters that are not relevant to this hearing.

Q. If he wants to say that he don't know what the rules are——

A. (Interrupting.) That would be a silly question to answer that way. I know something about it, I certainly had it jammed down me in the Montreal case in 1912. We all worked together on it. After the Independent Telephone Companies were invited to participate. The Company made the arrangement, not the public.

Q. Let's confine ourselves just to the question and we will save time and save your nerve?

A. Don't worry about my nerves.

Q. Just tell us the difference, if you know, between maintenance and depreciation?

A. No difference between them.

Q. None at all?

A. No sir. There is of course, you might say one is deferred maintenance and the other is maintenance.

Q. Can we, as a Telephone Company, in the case that I have just assumed for this telephone line, charge up the poles, the cost of the new poles to take the place of old ones as maintenance?

Mr. Howard: I think there should be some limit.

Mr. D. A. Frank: This man is an expert.

Mr. Howard: An opinion on Interstate Commerce rules.
1133 It is a matter to be determined by the rules and they have the rulings here, and if the rules do not permit them to set up certain replacements as maintenance, they do not, and if they do, then they do, and that is all there is to it.

Mr. D. A. Frank: This man has got his theory—

Mr. Howard: I suggest that while it is nothing that goes vitally to this case one way or the other—but Mr. Kelsey's construction of these rules are, I don't think are vital.

Mr. D. A. Frank: He made his report based upon these rules.

The Master: I don't like to limit anybody on cross-examination. I trust it will be as brief as possible.

Mr. D. A. Frank: Just as brief as I possibly can.

The Master: Confine your answers as much as possible to specific questions answered without volunteering information and we can probably make time.

1134 Q. Read the question Mr. Stenographer.

(Thereupon the last question was read to the witness.)

A. Charge it up as reconstruction.

Q. You do?

A. That is all the same thing. That is maintenance the minute you do it. The minute you change the poles you have a maintenance charge.

Q. You know by examining the figures in this case that there is something like 17,000 poles in Houston?

A. I haven't approached this case on poles.

Q. You haven't examined it at all.

A. I looked at them incidentally. My view point of this case is from the financial view-point, the impairment of capital.

Q. You are a telephone expert with a wonderful array of experience. Now, as a telephone expert I ask you to tell me if we can charge to reserve—if we can charge to maintenance items of a pole line as they wear out?

A. That is current reconstruction.

Q. That is?

A. Yes sir, so naturally what else could you charge it to. That is what I call voluntary reserve.

Q. What does the Interstate Commission call it?

1135 A. That is a scheme laid out by the companies by all the companies to unify—I have been through this thing before. I am not discussing that, I didn't bring that in the case.

Q. I am?

A. You can if you want to.

Mr. Howard: Do you contend that it is obligatory upon you to keep the books under the Interstate Commerce Commission's rules?

A. We admit it, and there is a \$5,000.00 penalty for not doing it.

Mr. Howard: For Interstate business. What jurisdiction have they over Intrastate traffic?

Mr. D. A. Frank: I will tell you very briefly, that the Interstate Commerce Commission has ruled that it has got jurisdiction over the books of even a local company if connected up to do long distance business.

Mr. Howard: Over the books.

Mr. D. A. Frank: And you can not keep any other kind. You have got to keep them this way.

Mr. J. D. Frank: I read the law on that in the beginning of this case.

1136 Q. Did you know we have to keep our books in accordance with the Interstate Commerce Commission?

A. Yes sir, and I also know that before that was set up we all got together and the Companies as a whole advised this. It is a Company proposition and I think it is fine.

Q. It is a law now?

A. It may be, you are not a Common Carrier, at least you have denied it.

Q. We are not talking about carriers?

A. You are talking about being under the rules of the Commission.

Q. The Law of 1909 put us under it?

A. It don't make you a common carrier.

Q. I am not talking about that?

A. All the Companies tried to keep us from that standpoint.

Q. We have to?

A. And the result is——

Q. We have to whether we want to or not?

A. I presume so, I don't deny that.

Q. We have to set up reserve for depreciation?

A. You ought too if you don't.

Q. We also have a maintenance account?

A. Yes sir.

Q. You know about the telephone business, that to maintenance you charge up minor items?

A. No sir not minor items. All the current stuff.

1137 Mr. Howard: You say that you charge up minor items of replacement to maintenance?

Mr. D. A. Frank: Yes sir that is right.

Mr. Howard: That is the proposition that I made a moment ago and you denied it very strenuously.

A. Maintenance is everything that can be replaced by Humane hands.

Q. Everything?

A. Yes sir. What is the difference in reconstruction and maintenance.

Q. Now, there is a certain street here in Houston and the paving was extended and we had a pole line and the pole line had to come down, and we put in all underground work to take the place of it. When the pole line come down should we charge the value of that pole line, the cost of the pole line to maintenance?

A. No, to reconstruction. If you did that last year it would cost \$9,000.00.

Q. (Interrupting.) You charged that to reconstruction?

A. Yes sir, there is no——

Q. That is a nice way of looking at it. Down in a certain street we had a pole that was struck by lightning, or damaged in some other way, would we charge that to reconstruction or maintenance?

A. It wouldn't matter which one, they all mean the same thing. Maintenance or reconstruction is anything that the human hands can put back in the original condition. Your own records show what it cost to do all this.

Q. I am asking you as a telephone man whether or not we can charge a pole that has to come down to maintenance?

A. Maintenance or reconstruction.

Mr. Howard: What do the Interstate Commerce Commission rules say, don't they say you can charge minor replacements to maintenance?

Mr. D. A. Frank: Yes sir, but not poles.

Mr. Howard: Would you call a pole a major replacement?

Mr. D. A. Frank: Yes sir.

A. The Nebraska Commission has taken the ground that Maintenance and depreciation are all the same thing.

Q. But the Interstate Commerce Commission has not taken that position?

A. The Interstate Commerce Commission,—that whole scheme was designed by a group of auditors.

Q. It is the law?

A. It don't make it right.

Q. It is what we have to obey?

A. Yes sir, that is allright, obey it.

1139 Q. Do you know of a case in Nebraska where the company did not keep its books in accordance with the Interstate Commerce Commission?

A. They are keeping the books, but the Nebraska Commission comes out and interprets that.

Q. In which case?

A. In a case in Nebraska.

Q. Name one?

A. I don't remember all those things. You can find them. You will find that maintenance and depreciation are all one thing.

Q. The same thing?

A. Yes sir, look at it and see.

Q. Can they set their books up——

A. (Interrupting.) They can set them up any way they please, and keep the records perfectly straight.

Q. Let's assume, so we can get on, let's assume that we have to keep them in accordance with the Interstate Commerce Commission's rules?

A. I think you ought to.

Q. And we have to have a depreciation account, and a maintenance account?

A. I am giving it to you.

Q. Lets assume when a pole line comes down we have to charge it to reconstruction account.

Mr. Howard: If you want to be fair in this case, why do 1140 you call it Pole Line, instead of poles. You know the pole line never comes down. Poles do come down.

A. In this case they changed it over to Underground Conduit. When it comes down you put the Underground Conduits in and naturally you are at some expense in making the change.

Q. If we didn't have a reserve for depreciation set up in accordance with the Interstate Commerce Commission's rulings, how would we get the money——

A. (Interrupting.) You wouldn't have it.

Q. Let me finish. How would we have money to rebuild the lines when the poles did come down?

A. You wouldn't have it unless you assessed your stockholders and that is why we are allowing this reserve to take care of this very thing.

Q. If those poles, on the average are replaced every 12 years, it is easy enough to figure you would have to get that amount of money sometime during the 12 years.

A. Not necessarily. My figures are based on 40 years' experience. 15 years ago I heard these predictions about this 6% this and 12% that, and it has not happened. You have got in this case Switchboards, 10 years. The common Switchboards were put in in 1898 and they are 20 years old, and you give them only a 10 years' life.

Q. Poles?

1141 A. That is all you talk about safely. Change the subject to something else.

Q. There is 17,000 poles in the plant?

A. Local or Toll?

Q. In the Local. Assume some average value for them, I don't care what it is \$10.00, how much would they be?

A. Figure it out.

Q. \$170,000.00.

A. The way I was taught it would.

Q. If you knew that in 12 years' time——

A. (Interrupting.) But I don't know it, my experience shows 22 years.

Mr. Howard: He is assuming that proposition, and you don't have to adopt it.

Q. Assuming it takes 12 years, the Pole lines would have to be replaced in 12 years, and that it costs \$170,000.00 or \$180,000.00, and you undertook to set aside an amount each year to take care of it, how would you arrive at the amount you would set aside?

A. There is no business on earth that is exact, if there was we would never lose any money. I see what he is driving at. In that case you would set aside 8% and charge against that all the items that come along.

Q. Now, you are talking sensibly?

A. I have been talking that all the time. I never talk
1142 anything else.

Q. You think if we have \$170,000.00 worth of property that did wear out in 12 years, that we ought to have 8% each year?

A. No sir, if it wears out in that time you ought to have something from the Public to keep it in 100% condition.

Q. We ought to get it year by year, that is the safe way?

A. Yes sir, I give you that, I can see that. There is no idea in this case but what the public pays for all these things.

Q. If you have some Cables—Cables will not last forever?

A. I have heard that there were some lead piping pulled out of—what is that town that Vesuvius covered up?

Mr. Howard: Pompeii.

A. There was some lead piping taken from Pompeii that is in perfect condition yet.

Q. Did it have any paper insulation on it?

A. No sir.

Q. What is it that wears out about Cables?

A. What kind?

Q. Any kind of telephone cables, Don't telephone cables ever wear out?

A. Up in the air it is shaken about and it sometimes becomes crystalized.

Q. Does lightning ever strike it?

1143 A. No man yet has ever been able to dodge the acts of God.

Q. Boys with rifles sometimes shoot at it?

A. They love to.

Q. Some times they have climbed poles?

A. Yes sir, they have done wonderful things.

Q. Would you say the same thing is true with reference to cables that would be true with reference to poles, that is that it eventually wears out?

A. Certainly, and the people are paying for wear and tear.

Q. Underground conduits wear out too doesn't it?

A. That is very doubtful. We still have records of Cæsar's works.

Q. Underground?

A. Overhead, but buried in Concrete.

Q. If it was buried like it is here it would get water soaked?

A. That ought to help it a little bit.

Q. That makes it last longer?

A. You pump your Ma-holes out Mr. Frank?

Q. But the water runs back in?

A. Naturally in that case you would help to drain them. You ought to drain the Manholes anyway.

Q. You would except this underground Conduit would seldom have to be replaced?

A. No sir.

Q. It would never have to be replaced?

1144 A. How could you replace a hole in the ground?

Q. You have some conduits then that is subject to the water running into it, and that has some affect on it?

A. Yes sir.

Q. And some times you have underground conduit that is not large enough and it has to be replaced?

A. No sir.

Q. You never have to replace any?

A. No sir, anybody that put in Standard Conduit 15 years ago never has to do that.

Q. Suppose you put in Standard conduit in a little town of 5,000 inhabitants and it got to be a town of 160,000 inhabitants?

A. Then you have your capital account.

Q. I am asking you whether you have to change it?

A. Sure you would, but look at the additional Capital account you would have in that case. Every dollar that is lost by increasing population is paid by the population.

Q. Do you know how this town is located? Main street is the principal street of the town?

A. I have looked at it.

Q. You know what Preston street is?

A. No sir.

Q. You know this street out there, San Jacinto Street, that runs by this building?

1145 A. No sir.

Q. You know there is a street running East?

A. I presume there are a lot of streets, but I wouldn't burden myself with the names of them.

Q. Is there a street that runs east of this courthouse?

A. Undoubtedly.

Q. Is there one?

A. As a matter of fact I presume there is. I will consider there is.

Q. Suppose this city should grow to be as large as St. Louis or Chicago, or Cleveland, isn't it possible the Conduit on this street, that leads out on this particular street would have to be changed?

A. No sir, they would have to be enlarged probably, but would go around another way. You might change the whole plan of operation.

Q. You know that conduits are changed?

A. If you grade a street why wouldn't you have to grade it. In

Cleveland they are driving the Nickel-plate Railroad through the town.

Q. You would have to set reserve for depreciation against Conduit?

A. No sir, they didn't know the railroad was coming through.

Q. On the assumption——

A. (Interrupting.) You have got no right to charge the people with what may happen. If it does happen, then, by George, they can not escape payment of it.

1146 Q. After it happens then they pay for it?

A. Yes sir, absolutely.

Q. Suppose the people at that time don't want to pay for it?

A. They have got to. You have the protection of the Courts.

Q. What protection of the Courts?

A. By granting rates.

Q. Can they grant rates?

A. They can in some communities. I am sure you have the protection of the Courts. We have always argued that.

Q. You know as a Telephone man that you have to get your reserve for depreciation along with the operation or you don't get it at all?

A. No sir, not as long as the Courts are in working order. Why do you show such a lack of confidence in your Government that you have got to ask for a thing in advance, for a thing that may or may not happen. If you should have this town destroyed by a Cyclone, you would be perfectly — to ask the Court for a rate to replace it. Until it happens—and then the City can amortize it over a period of 10 years. Nobody has to pay cash on delivery.

Q. Do you know of any business anywhere that is set up on the basis of waiting until something happens?

A. We are dealing with public utilities. My business does not but we have no protection of the courts.

Q. Do you have buildings?

1147 A. Yes sir.

Q. Do you amortize any of it?

A. No sir. It is worth about 3 times what it cost us.

Q. More than it cost you?

A. Yes sir, a great deal more.

Q. Why is it worth more?

A. Chicago has grown. It is the manufacturing district where labor is easily accessible.

Q. Has your Bank buildings grown?

A. No sir, but the land underneath it——

Q. (Interrupting.) How about the value of the building?

A. We couldn't replace it.

Q. How much did it cost?

A. \$65,000.00 and we couldn't replace it for \$100,000.00.

Q. Let's get back to this particular plant here in Houston. If there is 17,000 poles you agree that we would have to have a reserve for depreciation. If you had the money at the end of the time you would either have to do that or go into your capital account?

A. Yes sir, and how and why am allowing you a reserve. You

are trying to give the impression that I want to make you pay. You are working for the people and they are paying for this service.

Q. What you have said with reference to Pole Lines and Conduits, and Switchboards apply to everything except land don't it?

1148 A. If your land depreciates you certainly had a right to charge that in against the public.

Q. If the land were depreciating you would charge that also?

A. They invited you in here to give them service. By their invitation they guaranteed you certain things. If they invited you into a decadent community and you bought land there in good faith and it went down, they would have to pay for it, but fortunately no real estate investment has been—it is solid, next to the Catholic Church. You probably have increased fabulously in value.

Q. Are we or not doing our business in a prudent way in setting up a reserve for depreciation?

A. I am giving it to you and admitting it.

Q. Answer whether we are not?

A. I am telling you that I consider that down, and the amount would be \$146,000.00.

Q. I am asking you about the principal?

A. We are repeating ourselves and losing time.

Q. You could answer yes or no?

A. I said the Public has got to pay this Company for what it wears out. That is plain enough isn't it.

Q. You agree with me that we ought to have a reserve for depreciation?

1149 A. There is no question. I set that up in my statement as \$146,000.00.

Q. Mr. Kelsey, where did you get the figure of \$11.00 that you used yesterday?

A. I compiled rates as far back as I could. I want to call your attention to one thing in the Bell Report. This is the A. T. T. Report for 1910 page 4—

Q. In 1910?

A. Yes sir, let me go on. At that particular time looking over on page 3 it gives the number of station and *devoting* the number of stations as I am—and this station idea is to convey to you and me—You keep talking about Millions, but when we interpretate it into Stations, we know what it means, like a dozen eggs, or a pound of butter. At that particular time they claimed a certain number of station'—

Q. How many stations did they have?

A. 5,882,719.

Q. At \$10.00 a station?

A. \$8.84. Now particular attention is asked of this statement has been circulated to the effect that the Bell Company's has neither fully maintained their property nor set aside from revenues the usual allotment for reconstruction. The following figures are a complete refutation of that statement. The provision for depreciation

during the year was \$52,919,000.00 of which \$33,000,000.00
1150 was unused. The maintenance for that period was \$40,151,-
041.00. At that particular time there was 7,000,000 in pos-
session of The Bell Telephone Company, and the total cost for main-
tenance and reconstruction was \$1.70. We are still under that \$11
business.

Q. Have you got the last page of the report, the cover?

A. Yes sir.

Q. What year is that report for?

A. 1917.

Q. How many stations do they show on the outside cover that
they had in 1917. Look at the outside cover?

A. I will tell you what it means. I have been here before.

Q. I assume that you have been?

A. At the end of the year the number of the telephone stations
which constitutes the Bell System in the United States was 10,-
475,000.

Q. Does it show on the outside?

A. Yes sir it is right there. See it? Of the total number of
stations 7,031,530 were owned and operated by the Bell Telephone
Company is that what you mean? So that your Companies owned
7,000,000 stations and taking your own maintenance and reconstruc-
tion accounts for that year in the United States you get the re-
sult of \$8.70. It was a good year. There wasn't any storms or
floods.

1151 Q. They had how much to place to reserve?

A. \$33,000,000.00.

Q. How many stations?

A. 7,000,000.

Q. Look at the back of the book again. Tell me how many sta-
tions that report shows we had in 1901.

A. 900,000 Stations at that time.

Q. If the average life of the plant was 16 years, the amount they
spent out of the reserve for depreciation in 1917 would really be ap-
plicable to the plant in 1901 when they had 900,000 stations?

A. You can show what they did in that year.

Q. What did they spend in 1917 for depreciation?

A. I told you.

Q. Tell me again?

A. For maintenance and depreciation?

Q. Just for depreciation? Or both if you cannot give one by
itself?

A. For reconstruction that year the difference between \$52,919,-
000.00 and \$33,000,000.00 which they put away, making that year
a reconstruction account of \$19,919,000.00.

Q. Assuming the average plant was 16 years, what would
that—

A. (Interrupting.) I don't assume anything.

Q. Please answer the question.

A. I will not.

Q. Assuming the life of the plant at 16 years, and there
1152 were 900,000 stations in 1901 and \$19,919,000.00 was spent
for replacement in 1917 what would that be per station?

A. About \$2.50.

Q. Are you sure it would be?

A. Yes sir, it would be about \$2.60.

Q. It is of 7,000,000, it is 900,000.

A. What has that got to do with the 1917 report.

Q. I asked you to divide it by 900,000?

A. Divide it yourself. You show me what they spent for this——

Q. (Interrupting.) Let's stick to this question Mr. Kelsey?

A. What has that got to do with this, something that happened
16 years ago.

Q. You let me conduct my part of it. 900,000 stations put in in
1901 would have a depreciation, a replacement fund against it about
16 years afterwards if the life was 16 years?

A. No sir, you spend it all along.

Q. Assuming it?

A. You spent some of it in 1903, and some in 1904.

Q. Assuming it did, it would be something like \$20.00 a Station?

A. No sir.

Q. Assuming it would?

A. \$200.00 a station you are assuming in this case.

1153 Q. Divide 19,000,000 by 900,000?

A. It would be \$20.00.

Q. So it isn't absurd?

A. Yes sir.

Q. Not absurd as \$200.00?

A. No sir, but it is absurd.

Q. As a telephone man of long experience don't you know about
year to year what you spend out of your reserve for replacement is
not replacing property that has worn out that year but is replacing
property——

A. (Interrupting.) If the property wasn't worn out that year,
what would you replace it for?

Q. It wasn't bulked in that year?

A. No sir, but we would be in a nice fix if stuff didn't last.

Q. Wouldn't it give you some idea?

A. It would have no bearing whatever. All you have got to do
is to begin at the start and take the number of telephones the
company has and the maintenance and reconstruction they have
during the period and add that up and divide it and you have got it.

Q. If this plant was to be assumed to have a life of 16 years——

A. (Interrupting.) It has got a life of 100 years.

Q. The elements of this plant, I will say, the element of this plant
be assumed to have a life of 16 years and if that assumption
1154 be sound in the course of 100 years you would have 6 cycles?

A. Naturally.

Q. You yourself have assumed from cycles of 12 years?

A. I am not interested in your——

Q. (Interrupting.) You say you never testified in a case in which you assumed a cycle of 12 years?

A. Yes sir.

Q. Haven't you ever testified in a case in which you said the reserve ought to be 7%?

A. I might have said something like that in some local case.

Q. Did you ever testify in which you said 8%?

A. Yes sir, every telephone case——

Q. So you have testified in some case that the reserve for depreciation ought to be 8%?

A. No sir, I always set out this \$3.00 or \$4.00 per station reserve fund.

Q. I don't want to be unfair. Do you state positively that you have never testified that the reserve ought to be 7%?

A. I don't recall ever having testified to that. If you have the records, produce it.

Q. I am asking if you ever testified to that effect?

A. My memory doesn't serve me.

Q. Would a plant in a small town in East Texas have the same investment per station as here in Houston?

1155 A. Naturally no sir, that is absurd. You have got higher real estate values in the Cities. You have got a higher building value.

Q. Would the reserve for depreciation that would be sufficient in the one case be sufficient in the other?

A. About, yes sir. I find from experience they will always take care of most anybody's troubles.

Q. Take the City of Houston and assume it has got 27,000 stations and take the city of Philadelphia and your underground conduits work there for the Keystone Co., and assume that they have between 30 and 40 thousand stations, would the reserve for depreciation in the two towns have to be the same?

A. No sir. No. No. I don't say that anything has to be the same, or I couldn't say they have to be different. When an Insurance Company insures your life, based——

Mr. Howard: Just answer his question and we will get along better.

Q. What is the cheapest construction for a telephone plant per station?

A. That I know of?

Q. Yes.

A. One of the most remarkable plants in the United States is the Hayden plant at Highpoint North Carolina. He went down to Augusta, Ga., and his wife was an operator, and those two people together bought an old Common Battery Switchboard and
1156 *Common Battery Switchboard* and took it down themselves and moved it up to Highpoint North Carolina, and they installed that plant. To-day he has a Common Battery System that costs him only \$22.00 a station.

Q. Would you say that he ought to set aside \$4.00 per station per year for depreciation?

A. Yes, sir, it doesn't matter what the plant cost in the first place. He is going to have decay——

Q. Your theory of it, the \$4.00 would be proper for him to set aside?

A. I didn't say \$4.00. I say the difference between \$11.00 and what he actually spent. In this case I say the difference between what he actually spent and \$11.00 would be a reasonable assumption.

Q. You would take \$11.00 per station and out of that you would take your maintenance and set the rest aside for replacement?

A. Every dollar he didn't spend in keeping up his plant I think belongs to him.

Q. That is your system and you would say that system ought to be worked in Houston?

A. I don't say any system ought to be worked, but I think it would work here. I think when you are allowed \$146,000.00 you are keeping up with the Band Wagon.

Q. Would \$50.00 and \$60.00 a station be about the average investment?

A. In Common Battery Switchboards run about \$92.00?

Q. You have some as low as \$60.00?

A. Magneto Plants, men put in the switchboards themselves do their own work and put it in as low as \$40.00 or \$50.00 a station.

Q. If you had a very extensive system like you would have in New York or Chicago it would run even more?

A. That makes it expensive yes sir.

Q. What is the highest valuation you ever heard of, of a telephone plant?

A. \$125.00 or \$130.00, the Old Axiom used to be \$100.00 per station.

Q. That used to be when?

A. That is the money needed.

Q. When was that?

A. In the last few years, up to 1914.

Q. That was when you had one and two story buildings for telephone property wasn't it?

A. Who had?

Q. When Telephone Companies had that Axiom. They didn't have 7 story buildings?

A. They didn't need 7 story buildings. My independent clients always put in buildings suited for that purpose and they usually had a nice looking building like a Library building.

1158 Q. You have testified in quite a number of cases. You have observed in some cases where they had an investment of \$150.00 or \$200.00 or \$250.00 per station?

A. What cases?

Q. I asked if you had not?

A. I do not remember.

Q. What was the per station cost in Cleveland?

A. What?

Q. What was the investment in Cleveland?

A. \$15,000,000.00 for 104,000 stations, with an accrued depreciation of two and half million.

Q. I am not asking about that I am asking about investment?

A. \$15,000,000.00 divided by 104,000 stations will give you \$140.00.

Q. About that?

A. Yes, sir.

Q. Would say that the man who had this little plant that you have testified about that came to \$22.00 per station——

A. (Interrupting.) That was his own work.

Q. —ought to have a reserve for replacement the same?

A. He would have to have because he cannot buy his replacement material for the price he got this. He has to go into the market and buy.

Q. He would have to set aside as reserve for replacement——

A. (Interrupting.) The difference between what he actually spent and our general experience of \$11.00.

1159 Q. Based on what it would cost to rebuild the plant?

A. Yes, sir, under ordinary circumstances.

1160 Cross-examination.

Questions by Mr. D. A. Frank:

Q. Now, you admit that the Bell Company know something about the telephone business?

A. Why, you have got a business here 93 per cent good after all these forty years, and that shows a very well run concern.

Q. For instance, they set up \$4 per station for reserve?

A. I should say the first reserve ever set up in the telephone business was in Philadelphia in 1905. At that time the Bell Telephone Company never heard of reserves. You can look through their reports and you will never find the word, Mr. Frank.

Q. And the Bell Company has been setting aside something like 5½ to 6 per cent——

A. (Interrupting.) Oh, yes, since you started your 1912 system of bookkeeping.

Q. And you think that the Bell Company is not as apt to be right as you are?

A. The Bell Company is trying to enlarge its investment and make money on it, and have adopted the principles that would give the most——

Q. I will ask you if the railroads do not set up a reserve for depreciation?

A. Certainly. The Pennsylvania System puts its reserve into the property; that's how the tie property proposition came in there.

Q. Do most railroads set it up in that way?

A. They try to figure——

Q. Have they always done so?

1161 A. The question of reserve today is the least understood of any. Mr. Fisk, one of the most eminent bankers of this country, has made a study on what to do with reserves, and nobody, no authority, no court, has ever said what they are and should be

but they should have enough money on hand when they need it; that's all; that means that it is no different from an individual.

Q. Now, you stated in the Cleveland case that their reserve was too large?

A. I didn't say a word about it; you sprung that. Cleveland showed \$550,000 a year and I didn't say that it was too much.

Q. Didn't you say in the Cleveland case, Mr. Kelsey, that \$1,200,000 was a sufficient reserve?

A. That's the difference between the value the engineers found the property to be and its 100 per cent. You are getting right back here to this case again; they found the property in Cleveland 92 per cent good upon a \$15,000,000 property, and claimed and allowed \$1,200,000 as enough.

Q. You then modify your answer to what you said just now?

A. Let me read that; you have got all portions here.

Q. You stated in the Cleveland case the company has a rainy day fund there at the end of August 31st of \$2,273,859.60?

A. Yes; that's quite a tidy sum.

Q. To do with it as it choosed without charge. You also said, as a matter of fact the property at no time will always be found to be practically 92 per cent good?

A. Has to be in order to talk well.

Q. Hence eight per cent, or \$1,200,000 seems to be the 1162 actual limit a public utility corporation can take without putting the company in the position of eating its cake and having it, too?

A. Follow that right on.

Q. If more than \$1,200,000 is ever needed to keep this property 100 per cent the people can be charged with it, but there should be a limit to which reserves can be created before they are actually needed?

A. Why, I think that's excellent doctrine, protecting that property at par right along; there is no escape from that, Mr. Frank.

Q. Now, Mr. Kelsey, didn't you further testify that in case the Cleveland Company was changed to automatic that it would cost \$6,000.00 to put it over?

A. No.

Q. You didn't testify to that?

A. Yes, about \$60 a station.

Q. And they have 105,000 stations?

A. Well, just about,—it would run practically \$6,000,000.

Q. And you testified that if they put in automatics they would need all the reserves they have and some more?

A. Yes; and they can't get this automatic for several years to come and most of that automatic charge is going to be new account because what we are trying to take care of is the value of the old property scrapped. You have no right to depreciation and reserve for this capital account, and every dollar above what your old stuff cost is capital account.

Q. Mr. Kelsey, you testified in your exhibit here that \$140,189

would be a sufficient amount to take care of depreciation in the Houston local exchange——

A. And long distance.

1163 Q. And the proportion of the long distance lines which you intend to allocate to Houston which per cent you don't know yet?

A. You ought to know that. You are still holding the stuff back.

Q. You testified to that, haven't you?

Mr. Howard: Are there some steps being taken to furnish us that information?

Mr. D. A. Frank: Yes. If Mr. Kelsey had wired for it a week in advance we would have had it; he wired for it on Friday before getting on the stand Tuesday.

(By Mr. D. A. Frank:) Now, on that automatic switchboard—we have heard a good deal about the automatic switchboard——

A. Yes; you have heard quite a little.

Q. What is your opinion of the automatic telephone?

A. Why, it's an excellent thing to cut down your operating charges. Whenever a company gets to having an operating charge of \$16 per telephone per firl it is about time that they are adopting some machinery that would cheapen the cost of operating and give the public the benefit of it. Now, it is costing you \$16 to operate a telephone in Houston today, according to your figures. Now, if the machine system were adopted and you came in here and scrapped this property here and it caused you to operate on a new proposition of about \$4 a station, you could earn the \$12 a station in this town, would you capitalize—and it would *and it would* almost pay for itself,—your automatic system.

Q. Now, did you tell the commission at Cleveland that that was the way to remedy it?

1164 A. Yes, sir. I said the first thing in Cleveland was to wipe out the——

Q. (Interrupting.) Let's stick to the autmoatic. Now, according to your idea, by spending six million dollars the Cleveland Company could have cut down their tremendous expense still further?

A. Oh, that is absolutely true.

Q. But it would have cost six million dollars to do so?

A. Oh, some of it is capital account, Mr. Frank.

Q. What proportion of it?

A. Look at the testimony and find out what the switchboards, less junk, are worth?

Q. What are they worth?

A. I don't now; you have got my testimony; read it.

Q. You didn't testify to it in the Cleveland case,—about junk?

A. No, no; that was bothering Mr. Crain and the commission more than it was me. I went into Cleveland to show the state of the equipment, how the thing stood, and I didn't give any opinion.

Q. Now, as I understand you, we could put in an automatic switchboard?

A. In the next seven or eight years; you couldn't get one under six or seven years, I don't believe.

Q. Why?

A. Because they are all signed up for four or five years.

Q. Couldn't get one under how many years,—five or six?

A. You might or might not.

Q. After you give your order?

A. Yes.

Q. Switchboards, sometimes, wear out?

1165 A. Now; now can German silver, platinum and copper wear out?

Q. But switchboards do wear out?

A. One never has. You take a switchboard and rebuild them.

Q. You say a switchboard never gave out because it wore out. Have you ever testified that one did?

A. Well, you have got all this stuff here, so come and tell us. I am going to make you go back to the Birmingham case before you quit. You know you started this thing.

Q. Didn't you testify in the Enid case that a certain switchboard case out because it was worn out and that it was only six years old,—the Indianapolis switchboard, and it was a Kellogg switchboard, and that you didn't make them as good then as you were making them at that time?

A. Oh, we did that first in the Keystone Telephone, but it was a mistake; but what we put in in Indianapolis and St. Louis was an enlargement.

Q. On what?

A. On some of this scrap that the Bell Company had abandoned.

Q. And that was a liability?

A. Well, you couldn't build it until we let you.

Q. That's true,—the same with other inventions?

A. I suppose you folks have invented the whole world. Why, I think the inventor of the automatic system is in the court room.

Q. Who is he, Mr. Kelsey?

A. Mr. Gates.

Q. Mr. Charles A. Gates?

A. Yes, sir; and I came down and tried to buy him out.

Q. Why didn't you buy him out?

A. Charlie had too much sense to sell out.

1166 Q. Is Mr. Gates a millionaire now on account of it?

A. I hope he is if he aint. You can't any more carry on telephone service today without a lot of manual help than you can carry on an old wagon road system,—the railroads take its place,—it's got to grow.

Q. Switchboards sometimes have to be changed?

A. Oh, yes; in 40 years we have had a lot of changes,—they are right in the record and have all been charged in the bill.

Q. When? How do you pay for them?

A. Rebuild them and sell them somewhere also. Way back in the 80's,—Cincinnati put in a switchboard, Mr. Frank, along in the early 80's. The Cincinnati Bell Company had what they called a

drop switchboard, still a magneto, and when they changed they shipped that old board to Kansas City, and it served there in the main office in Kansas City from about 1894 until 1903 and then it went on down to Joplin and served its time there and is probably being used somewhere today. They can't wear out. What is there about it that will?

Q. If the switchboards in Houston, Mr. Kelsey, should be replaced and the subscribers' equipment should be replaced with automatics—

A. (Interrupting.) What part of the subscriber's equipment?

Q. Well, all necessary parts in order to make it automatic.

A. Except the transmitter, receiver and induction coils?

Q. Well, all necessary parts.

A. Please be specific. Are you going to eliminate only the board,—the switchboard?

Q. Well, what would it cost per station in Houston?

A. I don't know; I would have to make an estimate, and
1167 the city is not interested in that.

Q. Please answer the question. Would it cost you about \$60 a station?

A. I don't know. You can find that out.

Q. You testified in Cleveland that it would cost \$60 a station.

A. That was my information. It used to run \$39.95. When Houston had the old Holmes Company the prevailing price of automatics in those days was \$40, and that covered the installation of switchboard and all; and now it will run up to about \$60.

Q. And that's your judgment of what it would cost to put it in in Houston?

A. Yes.

Q. Now, we have about 27,000—

A. Yes.

Q. —so it would cost something over a million and a half dollars?

A. May be,—no.

Q. To put in automatic switchboards in Houston?

A. Mr. Frank, certainly not.

Q. Well, what would it cost?

A. Well, you would have to tell me all your lines.

Q. Well, we have 27,000.

A. Oh, no, you haven't. You will have to learn something about your Houston plant. Ask your own local manager something about it.

Q. Didn't you say that the cost in Cleveland was \$60 a station?

A. In that case it was semi-automatic.

Q. If we put in the semi-automatic here it would cost \$60 per station? Would it, or would it not, cost the same in Houston?

1168 A. Not necessarily, because they had eleven offices there and you have three, I think; I don't know what you have here.

Q. Well, would that reduce it any?

A. A little.

Q. How much?

A. I don't know. You know I am not the sales manager of the automatic telephone but if you will ask me what a Kellogg would cost I can tell you.

Q. Well, let's assume that it would cost \$60,—that would be something over a million and a half?

A. A million—you have got 18,000 lines, you know, and there are no instruments in this cost,—you don't replace those under any circumstances.

Q. Well, \$60—

A. (Interrupting.) No; you claim to have \$5 worth of stuff on every station.

Q. At \$60 that would be \$1,620,000?

A. For how many?

Q. 27,000.

A. No; stick to the lines.

Q. But your statement—now, that is the first time you have used the word.

A. Oh; may be.

Q. You have been talking about stations, and you laughed at me yesterday because I wasn't familiar with stations.

A. I know, but when you are talking about an automatic station—an automatic switchboard in every line, how many switch-
1169 board line- have you got in town?

Q. You put it in a per station basis in Cleveland?

A. As the maximum, as an approximation.

Q. Let's approximate it here at \$1,620,000.

A. Make it \$2,000,000 if you want to.

Q. What per cent of that would you get for the junk value of the old switchboard?

A. I don't know.

Q. Would you get as much as 20 per cent?

A. I don't know. If you offer to sell it to me I will estimate what I might pay for it after looking at it.

Q. Would you pay 20 per cent?

A. I don't know.

Q. Would you pay \$500,000 for it?

A. I would not enter into any controversy—

Q. What is a switchboard worth? What's the account on the books?

A. Well, when—

Q. I think it is something like \$1,300,000?

A. Then certainly you would have to pay that bill. Let me tell you something: During the war the Cleveland Telephones needed a board, and came down here to Waco and bought a small Bell board down there from you folks, and were tickled to get it, and I hardly think you would recognize it when it was lined up with other boards; I know I could not until they told me about it. Somebody was doing Herculean work in Cleveland. You know I have been everywhere, and I can tell you a whole lot about Waco, but they bought the old switchboard, and I don't believe you folks lost a cent.

Q. Assuming \$1,300,000 for the present board, and if it is
1170 20 per cent—

A. I didn't say 20 per cent. You can't get me on that.

Q. I am informed by the chief engineer that they got 20 per cent out of the Waco board.

A. That settles it. If you got 20 per cent you were suckers; they had to have that board and you could have sold that board for more than it cost,—that is another proof that the A., T. & T. Company has got its finger in the pie. Did you give that board to Cleveland at 20 per cent? I would like to be excused so that I can go out and laugh.

Q. If this switchboard in Houston, that we are discussing, if it has a reproductive value of \$1,300,000 and a junk value of \$260,000, would have to be charged off at \$1,040,000?

A. Why, certainly. The people of this town should pay for it; I don't deny that, and haven't at any stage of the game.

Q. Supposing—we will assume that we are going to replace that switchboard within the next ten years—that would be a reasonable assumption—

A. Well, you would be lucky if you got it in ten years. When did you start?

Q. Well, let's start—

A. (Interrupting.) You are coming in and trying to begin now. You can't put over that stuff on me. You didn't begin your reserve for depreciation. I told you awhile ago that wise men all started earlier.

A. Well, with \$1,040,000—assuming that that switchboard was coming out in ten years—it would be sensible to set aside \$104,000 annually in order to take care of that?

1171 A. If you begin on it when you put the boards in.

Q. I am taking your assumption.

A. No; you are not,—you are assuming nothing of the kind.

Q. Let's call it my assumption, then. Now, if we are going to use,—going to lose a million and forty thousand dollars in ten years, practice would suggest to set aside \$104,000—

A. Yes; it may be right. You have \$1,460,000 on hand, even if you are starting now, but your reserves show a million already, or so.

Q. Then that \$104,000 a year to take care of your switchboard alone.

A. Well, all right. You are making a beautiful picture,—go right ahead.

Q. Now, you allowed \$148,000 a year for depreciation for the whole plant, including whatever per cent of the toll lines of the entire State of Texas that you intend to set aside.

A. Oh, no. That's what you should have been setting aside all these years. You can't start today, but you certainly find yourself burdened with depreciation.

Q. That would leave \$44,000 a year to take care of all other depreciation?

A. Well, the changes in the art have taken care of all reconstruction in normal accounts.

Q. Do you seriously tell this Court that the maintenance would take care of the depreciation of the plant?

A. Why, your books show what you are doing in this town every year——

The Master: Just answer the question.

1172 (By Mr. D. A. Frank:) Does maintenance take care of depreciation?

A. Yes; maintenance and depreciation are the same. I am talking about reserves.

Q. They are all the same thing?

A. Yes, sir. The Nebraska Commission goes along with me on that, but reserve for depreciation——

Q. What are reserves for depreciation for?

A. To keep your property up and to protect your investment at all times against loss.

Q. Let me see if I understand you; let me state two ways and tell me which is your theory: Is your theory this, that we should set aside \$4 per station per year and call that the reserves for depreciation and to that fund charge all replacements?

A. No; that has nothing to do with that. That's in current expense,—that's a renewal reserve.

Q. Now, I am beginning to see what your theory is.

A. I know you have been asleep at the switch two days.

Q. Mr. Kelsey, let me state your theory and see if I understand you.

A. I came here and find you putting all expenses that you possibly could into the Houston exchange and I said that while you were doing that——

Q. (Interrupting.) Let me state your theory.

A. If ain't theory. Now, you are getting all mixed up between theory and practice. It is my suggestion and belief.

1173 Q. If I understand your theory properly——

A. Get that, my belief, properly.

Q. If I understand properly your belief is that we should ascertain for all maintenance expense, including the proper replacements, set aside——

A. (Interrupting.) Current replacements?

Q. Current replacements, set aside \$4 per state per annum as a permanent reserve for depreciation?

A. No; for renewals,—for that rainy day time when you buy this automatic switchboard.

Q. That's quite a different proposition.

A. Absolutely not.

Q. That's quite a different proposition from your set-up on our books.

A. I don't care anything about that. Why, you come into this case and put your best foot forward and show your maintenance so much, and reconstruction so much——

Q. Now, Mr. Kelsy, on page one of your exhibit you have "Maintenance \$139,000"——

A. No; you have that; that's your report.

Q. \$139,501. That's the figure you adopt?

A. Now; I don't believe you any more, and I will have to see.

Q. Look and see.

A. Yes; that sounds good.

Q. \$139,501.81. How much did you account for that year was spent for realized depreciation?

A. Where? There it is. I am surprised at your statement,—reconstruction, \$9,635.00.

1174 Q. Now, did you know, Mr. Kelsey, that that item was a charge for an account, reconstruction, that's allowed by the Interstate Commerce Commission as customary?

A. That's what you did. You spent that, didn't you? You know that's maintenance charge to the reserve—I don't care anything about that; I allow you full credit for that. In your cost you didn't ask for that, and I am giving you credit for it; in your case you don't allow that. We have been asking you all along what you spent for reconstruction and you didn't give it to the city.

Q. Do you know that in addition to the figures you have on that statement there, \$32,178.23, was charged against reserve for replacements?

A. Why did you put it in? Put it in, and then I will give you the difference between \$11 and what you have there,—put it all in.

Q. Did you know that in 1909 the realized depreciation of the company was \$28,027.10?

A. Why, that don't make much difference; add that to maintenance charge and deduct it from the \$11 average.

Q. And in 1910,—getting up a little bit closer, 1912, the total amount of realized depreciation was \$183,903.

A. Why didn't you give that information to the city?

Q. I am reading this from the city report.

A. It don't make any difference; no matter what went in there,—put it in there.

Q. And in 1913 the realized depreciation was \$121,396?

A. Well, why didn't you put it in?

Q. In 1914 the realized depreciation was \$57,747.79, and in 1915 the realized depreciation was \$115,170.52.

1175 A. Well, why wasn't that put in and given to me? You wouldn't furnish the city with that.

Q. It was furnished to the city. I am reading from a copy of reports furnished to the city during the last nine years, and in 1916 the realized depreciation was \$157,372.69, and in 1917 the realized depreciation was \$152,600.63.

A. What is the maintenance that year?

Q. I haven't the maintenance figures,—and in 1918 the realized depreciation was \$74,622.40. Now, Mr. Kelsey, do you understand that these figures I have just read are charged on our books under the rules adopted by the Interstate Commerce Commission against the reserve for depreciation,—do you understand that?

A. I do so. Yes, you spent that.

Q. That money was actually spent?

A. If you actually spent it you are entitled to credit for it every year that you ran your business in Houston.

Q. For instance, in 1916, we had fewer stations than we have now and our actual realized depreciation was \$157,372.69.

A. What were you doing that year?

Q. We put in some renewals.

A. And some construction is possibly there.

Q. This has no construction in it whatever, not a dollar—there was \$63,207.96 labor and \$196,610.17 material, from which there was a salvage of \$102,425.44, leaving a balance of realized depreciation of \$157,372.69. Now, Mr. Kelsey, that year we would have spent more than your \$4 per station amounted to?

A. Sometimes you would and some years you would not.

1176 Mr. Howard: That was the year of the storm.

A. I am trying to show that his amount will take care of all of this. I want this, and when I make my final report I will include all of this. When I get through, if I can get this stuff, I will have that all in there.

(By Mr. D. A. Frank:)

Q. Does that suggest to your mind that \$148,000 would not be sufficient?

A. Not at all, Mr. Frank.

Q. Now, Mr. Kelsey, evidently I did not understand your theory a few minutes ago.

A. Why, you haven't understood it from where we started.

Q. Do you understand it?

A. You bet I do.

Q. Does anybody else in the world understand it?

A. You bet; every telephone man, and all bankers, know beautifully what that is.

Q. Has any commission, court, or expert ever followed you in that?

A. Why, yes, they have.

Q. Which one?

A. Why, Indiana; in Logansport they were perfectly willing for \$3—

Q. (Interrupting.) That isn't the question I asked. I asked you if any court, commission, telephone company or expert has ever followed you in this theory of yours of setting aside \$4 per station per annum for depreciation?

A. Mr. Theodore Gary always has, and I understand the Kinloch Company adopted the cash reserve proposition. That's what I am talking about,—renewal reserves. There is no difference between a cash reserve and money invested in—

1177 Q. (Interrupting.) I am speaking about \$4 per station.

A. That's a reserve fund.

Q. Has any telephone company or expert or court or commission ever followed you on your theory that \$4 per station is the right amount?

A. Why, the North Dakota Telephone Company and all my clients always did it that way. We had no measure to go by.

Q. What court or commission—

A. (Interrupting.) A court or commission don't concern me; I never made a dollar out of a court. About—

Q. During all of these years have you followed this scheme?

A. Practically all the time.

Q. That explains why most of them have gone on the rocks?

A. My ability to push them to ask for higher rates. I hate to go before a commission and face a smart attorney.

Q. Now, I don't understand your belief, because if I did, you would have answered that all these items of realized depreciation ought to have been charged up as maintenance.

A. In the operating expenses—current expenses.

Q. And the \$4.00 set aside in addition to this?

A. No; I would add both of them together and give you the difference in the reserve fund between that and \$11.

Q. The average for a number of years appears to be considerably over \$100 realized depreciation. What year would you like to have that back to?

A. I would like to have it back to 1900.

Q. The realized depreciation, Mr. Kelsey, would naturally be smaller in the earlier years, wouldn't it, when the plant was not so large?

A. Well, it would be a certain amount on your books. We don't care what it is but want to know what it is; in fact, come in and show your records of all years.

Q. Would realized depreciation be less in a small plant or a large plant?

A. Have to be less. If you have got in a plant of 23,000 subscribers you naturally deal in larger units.

Q. In the realized depreciation, as I understand you, ought to be added the maintenance?

A. I intend to when I get the final figures and put my final report in here.

Q. And when you add it to the maintenance you subtract the per station amount from \$11?

A. Yes.

Q. Now, just why do you use \$11?

A. I told you in the outset, and explained it, and have even put it in writing and given it to you. It is the basis of all the years and is the result of engineering conjecture and of so-called theories or suggestions, and it has never amounted to more than \$11.

Q. It amounted to \$11 on the stations then in existence?

A. Absolutely each year clear back.

Q. But the proportion applicable that year was necessarily applicable to stations in existence—the average life of the property before that?

A. I know nothing about "average life,"—the actual life.

1179 Q. The actual life of the property. That was taken out that year; that would be true?

A. Why, certainly; and we have done that.

Q. And you did it yesterday and found that if we assume the average life of the property to be 16 years——

A. (Interrupting.) I didn't assume anything.

Q. I assumed it. Other witnesses here have understood it was actual, and I have assumed a 16 year period in order to be fair. Now, you would have to divide the total amount of money by the number of stations in existence 16 years prior——

A. (Interrupting.) No; we go back to the start.

Q. If a telephone plant remained stationary for a number of years would the result be different from what it would be if it was growing rapidly?

A. No; when it is growing rapidly you are adding to capital and have got a chance to gumshoe a lot of stuff in maintenance. You remember the Southern Pacific Railroad built thousands of miles of track out of maintenance? There is always a question as to whether it is maintenance or capital, and I would have to look at the books to see what that was.

Q. Taking, for instance, 1917, when there was \$152,000 realized depreciation as compared with \$32,000 in the year that you actually used the figures furnished you by Mr. Lyndon, taking that year, if you were told that \$50,000 of that realized depreciation was telephone poles, and you thought that this plant eventually would be very much larger than it is now, would you concede that at some time in the future a still larger amount would be necessary to be expended in one year for poles?

A. No. You found after 40 years of study of doctrine and 1180 theories that the sum amounts to so much.

Q. Mr. Kelsey, if the realized depreciation is only \$18,000, but in 1917 was \$152,000, just why did that happen?

A. I don't know. You ought to know. You have got the records, and your engineers made reports and recommendations.

Q. Isn't — reasonable to suppose that in 1917 a greater proportion of the property in 1917 had to come out because of advanced age and use?

A. No.

Q. And public requirements?

A. May be.

Q. In other words, as the plant grows——

A. (Interrupting.) You would have a charge against the records of that year.

Q. As the plant grows up there will be more to lop off each year?

A. And there may be years that you won't lop off anything. All you need is to go back in 1910 and find out what you actually lopped off, and I allow you that. If it went in in the ordinary way I propose to set it out in the ordinary way and make a study of this question to see whether that doctrine doesn't apply.

Q. You would say, regardless of your plant, that \$11 is sufficient,—that what you — is to add the maintenance for any year to the realized depreciation, or current depreciation, I believe you call it,

for that year, and over and above that you ought to have some additional to set aside?

A. The difference between that amount——

1181 Q. (Interrupting.) Well, I said irrespective of the \$11.

A. No; you always find me standing on that \$11 proposition. It is the result of tests, and in Cleveland if they had set aside this little rainy day fund of \$4 they would have had all the money they needed to rebuild that plant.

Q. If a man had a plant costing \$22 per station he would have had the same experience?

A. No; you are talking about abnormal conditions.

Q. Take one costing \$60.

A. The same proposition.

Q. You say that a plant—take a plant that cost \$60 per station and you say it ought to set about \$11 per station?

A. I am talking about \$11 being the absolute maximum.

Q. And in one costing \$90 a station, \$11 would be sufficient?

A. Because on \$90 the plant has underground construction and more perfect conditions.

Q. On \$120, \$11 would be sufficient?

A. Same thing.

Q. One costing \$150, \$11 would be sufficient?

A. Absolutely.

Q. And at \$180, \$11 would be sufficient?

A. I am going to show, and am going back through the history of the Houston plant absolutely and not theory.

Q. At \$200, \$11 would be sufficient?

A. Absolutely, and in the Keystone case it has proven it beautifully well.

Q. You stated yesterday that you had not been to the
1182 Keystone people and examined their books for about eight years.

A. I told you that they publish a correct statement every month but I hadn't watched it particularly.

Q. But you stated a moment ago that it worked out beautifully.

A. It is common knowledge.

Q. If it worked beautifully how do you know that, if you haven't seen the books?

A. I have seen the published statements.

Q. Still don't you know that they themselves start their reserves for replacements too small?

A. No. It has been perfectly satisfactory,—the arrangement has proven perfectly satisfactory, and my judgment with New York, with this particular firm, it considered A-1, and they know, after it has been demonstrated for fifteen years that the plan is right.

Q. At \$90 it would be about 11 or 12 per cent?

A. I am not interested in a per cent proposition; I never approached this case from a percentage approximation, and that is something that has no application—the approximation.

Q. \$150 per station that \$11 would be something like 7 per cent,

wouldn't —, and \$200 per station at \$11 per station would be about 5½ per cent?

A. You seem to be a pretty good mathematician.

Q. Now, Mr. Kelsey, the fact that the most successful telephone people in the world——

A. (Interrupting.) Who are they?

Q. The Bell Telephone Company.

A. (Not caught by reporter.)

1183 Q. Is the Bell Telephone Company successful?

A. They pay their eight per cent.

Q. Are they as successful as any telephone Company?

A. Apparently you are successful.

Q. The Bell Telephone Company is as successful as any other company, isn't it?

A. Why, that answers itself.

Q. Is there any company any more successful?

A. Yes; the stock of the Ft. Wayne Home is quoted at \$400, and your old stock at \$95, if you measure success by the market value of the stock——

Q. What company is more successful than the Bell?

A. Why, the Johnstown Telephone Company is \$330,—the stock.

Q. Stock isn't what I am asking for.

A. You are talking about success.

Q. How big a company is the Johnstown Company?

A. About 10,000 stations, in a little manufacturing town,—a very wonderful place.

Q. Would you say that the Bell Telephone Company was reasonably accurate in what they did in respect to depreciation?

A. Why, they have got more than they need; they have got three hundred million reserve.

Q. Is that one of the reasons you think we may go broke sometime?

A. Why, that isn't the proposition at all. I am not saying that you are going broke, but the question is as to whether or not you are going to maintain the eight per cent.

Q. I am talking about depreciation and reserve for depreciation.

A. The reserves of the Bell Company are three hundred
1184 million dollars.

Q. I am not asking the amount, but I am asking if the per cent the Bell Company has been setting aside for several years on a percentage basis——

A. No, I didn't say anything about per cent; it don't say anything about per cent in there; it says after you get all you have out there are 33 million dollars left.

Q. Do you take the annual report of the American Telegraph & Telephone Company?

A. No; but that report goes to its stockholders, and my wife happens to be one. Here it is.

Q. You do know that the Postmaster General made an agreement for \$5.72 per cent?

A. Let me go out and let me laugh again at the Postmaster Gen-

eral in this case. Now, look here! Of all dirty contemptible, put-up jobs, the Government ownership is the limit, and I would like to tell them so; and on that committee was Mr. Bethel, Mr. York, Mr. Stevens and Mr. Arthur Adams,—all Bell men except one,—Mr. Adams.

Q. Do you know who the Postmaster General is?

A. Oh, any fool knows who Mr. Burleson is.

Q. Do you know?

A. Yes, sir.

Q. Is he a fool?

A. No; I said any fool knows who Mr. Burleson is. I think Mr. Burleson is very clever.

Q. Did he have any expert advice in this case?

A. Yes; he had the advice of Bethel, York, Stevens and
1185 Adams. I think the gods laughed at that committee.

Q. Were they the first committee appointed?

A. Practical committee.

Q. Were they the operating board?

A. Yes; everything went right back to that committee.

Q. Who was the operating board?

A. That's the board I am telling you about.

Q. Wasn't Judge Lamar one?

A. Oh, Judge Lamar, and it was Koons, our friend, who shut up and closed the board.

Q. Mr. Lewis?

A. Yes, sir.

Q. Tell us how dirty it was.

A. Because they put through all the things they wanted to, and had never tried to do before, and still it had the Government's sanction.

Q. Go right on.

A. They put through all the things the Bell Company wanted them to.

Q. So the 5.72—

A. (Interrupting.) That was outside the Bell grab.

Q. Was that one of the dirty things?

A. That was one. Why wouldn't Bell—

Q. Do you happen to know that 5.72 was less than the reserve for replacements that the Bell Company had been setting aside throughout the United States?

A. I don't know what they have been setting aside except from the books.

Q. If it was less, Mr. Kelsey, in what way was it dirty to get 5.72 per cent?

1186 A. The word "dirty" might not be the word; the word "clever" might be substituted. Let any company get 5.72 per cent and it will wax fat. The Bell Company has never known what to set aside until the last year or so, and have been just as much in the dark as anybody else.

Q. Mr. Kelsey, you have been testifying in rate cases for some time?

A. Yes, and you have been cross examining me a little longer than usual.

Q. The question was, you have been testifying in rate cases for some time?

A. Oh, since 1904.

Q. Now, during all of that time the words "reserve depreciation"—

A. I never heard it until I originated it myself; that's the first record I have of it.

Q. The Bell Company want to follow your lead in that?

A. Oh, no. I don't own the Bell Telephone, and then they don't own me; I am raised up among the independent telephone interests.

Q. At least we agree on this, that some reserve is necessary?

A. I have given you some.

Q. We can agree on that?

A. Yes, sir.

Q. Now, the question is simply whether or not the Bell Company's ideas of setting aside a percentage basis is sound?

A. I didn't set it aside on that basis at all; I am talking about that basis being the net result, and you come in here and talk about—
I don't know what you mean.

1187 Q. You also know that if you had a building which you had had for a long time, say 20 years, that it would be prudent to set aside r per cent of the cost of—

A. (Interrupting.) My father's homestead is 40 years old and is in magnificent condition today.

Q. Your father's homestead wasn't used for business purposes?

A. Yes; quite a family was raised there, and I think that is a very serious business.

Q. Mr. Kelsey, just to refer again to this analysis of the \$11 on the basis of \$60, it would be something like sixteen per cent, and on the basis of \$200 a station it would be about 5 per cent. Now, we get away from the Bell Company in our talk, but the Bell Engineers have always kept these costs up on a percentage basis?

A. Why, it is a very necessary thing to do in order to establish these rates you want.

Q. It sounds reasonable that if a plant is worth \$200 it would have a larger need for a depreciation fund than one—

A. No; that's where you are wrong. Where a plant is larger you have better buildings, more beautiful buildings, more apparatus, and you have more chances of keeping the property up, you know,—you have more appropriation and more chances for keeping their property new. The bigger the city the better the investment is and the better the chances are to pay more. In the Northwestern territory Minneapolis is first and then St. Paul second.

Q. Seriously, now, do you think that the depreciation rate for a small company should be the same as a large company?

1188 A. I am not talking about the depreciation rate.

Q. Well, the rate for depreciation plus maintenance.

A. No; you keep talking about something that I am not talking about; I am talking about the money that I think will be enough when you need it.

Q. You are talking about \$11?

A. I think \$11 is enough throughout the years.

Q. But of course——

A. (Interrupting.) I am not talking about 1919; don't get it in your head that I am talking about the reserve rate for 1917—that's only incident to the proposition. You have been in business since when?

Q. We are talking about 1920.

A. No; you and I are not talking about the same thing.

Q. But your reserve has to be set aside from year to year?

A. From the beginning, Mr. Frank.

Q. If you began the plant in 1920——

A. I am talking about just like on this proposition——

The Master: Let's confine ourselves to his assumption.

(By Mr. D. A. Frank:)

Q. If you started a plant in 1920 with \$60 per station and I started one at \$200 per station, do you think that \$11 would be the proper amount for both plants?

A. Absolutely. I think you would both come out very nicely on that theory.

1189 Q. Just one more question, Mr. Kelsey, on that: In making up your figure of \$11 you took the total amount that was shown by the bill in what year?

A. All the years, Mr. Frank,—all the years—money that they spent.

Q. And then divided it by the number of stations shown on the back of the book?

A. No; that's the company that you call "Bell"——

Q. You intend to testify again in this case?

A. I don't know. I am going to Dallas, and presume I will have to come back and put in my finals.

Q. Will you make an analogy showing how you arrive at the \$11 rate and present it to us the next time you testify?

A. I don't know whether I will or not. I will try to do that if you will give me all of the A., T. & T. Company reports back. Are they in Dallas?

Q. Suppose you get the A., T. & T. reports there?

A. No.

Q. They are probably in St. Louis or Dallas.

A. I would just love to have those.

Q. Will you take all you find?

A. No. In the meantime you can set up the gross and totals; you have got it yourself.

Q. You didn't have that in the Keystone case?

A. Yes; Telephony had it at that time, practically every report that was out back to—there wasn't any back of 1893.

Q. Will you take one or more of the reports, or as many as you can get, or as many as you desire, and show how you arrive at the \$11, and make an exhibit and present it to us next time?

1190 A. I will be very glad, if you will furnish me the information; I will give you everything that you ask for, anything in this whole proposition, if you will give me the information. I will take chances on it and come into court with it.

Q. You made the statement that \$11 was sufficient because you got it from the Bell reports?

A. And measured up with all reports; I told you repeatedly in all the history of the telephone business in forty years had they followed this plan and started out they would have the money to do the work, and this company should have at all times enough money to take care of its needs.

Q. I am just asking you if you will furnish me the information?

A. I will give you anything that you give me the basis of.

Q. Will you furnish us with a detailed statement?

A. If you furnish me the reports, I will.

Q. Showing how you arrive at this figure?

A. You bet I will, if you will give me the reports back to the beginning,—I want them all. You had them all back to 1903 at one time,—you had them here in Texas.

Q. What is the final report you have got there?

A. This is 1912—happens to be—and you have got my '17.

Q. No, I haven't had one of them at all.

A. I would prefer to accede to your request. You give me all these books, and let's give the Court the benefit of it on this proposition and if I am wrong, cut off. I want all your annual reports,—all your statistics.

Q. Well, now long back?

A. Well, back to—back to 1860. I don't know anything—

1191 Q. You arrived at the \$11 figure in some way?

A. Well, I will show you if you give me the reports. You don't want that testimony.

Q. I want the testimony.

A. You don't like it—never have liked it.

Q. Tell us just exactly what you do want?

A. I want all the statistical reports of the A. T. & T. Company back to the birth.

Q. You got it from their annual reports, didn't you?

A. Yes, sir.

Q. For what year?

A. Why, I had all the way from '08 to '17 at that time,—14 years.

Q. When you adopted this figure?

A. I adopted it way back in 1905 and have seen no reason to change my mind.

Q. You adopted it in 1905?

A. Oh, yes.

Q. It was considered necessary to have reserves back in 1905?

A. You have got the dope, and let us have it here. I want it all.

Q. Well, you adopted it, you said, from annual reports?

A. I had enough of the A. T. reports to convince me, but I am liable to conviction if you can show me where I am wrong.

Q. You undertook yesterday to tell us how you arrived at \$11 per station.

A. Yes, I did.

Q. And I ask you to reproduce it for the Court.

A. I want your books of record, and I will give you a nice
1192 thesis on the proposition.

Q. You didn't have the books and records when you made the \$11?

A. Yes, I have had them a great many times,—have had 25 or 30 of these copies. I will take you up on this proposition.

Q. Let me ask you the question, if you had the annual reports for 1913, 1914, 1915, and 1912—

A. (Interrupting.) Oh, no. You didn't begin business in—

Q. (Interrupting.) 1918? Would they throw any light on the \$11?

A. Don't touch the issues,—give me all of them.

Q. I don't know what we can give you, but we want to give you all you want.

A. I will take up your proposition and give this court the information.

Q. Can you,—if you had those reports, can you make a study and show how you arrive at \$11?

A. Certainly. Let's go back and be honest about the proposition.

Q. You don't object to hearing your testimony that you gave in any other case before?

A. Certainly not. Take the Birmingham testimony, and I am going to make you read it to this court about the terminal value. You made the start and I am going to finish it and make you come clean on this whole testimony proposition.

Q. Will you or not make an investigation and give us your figures on that \$11?

A. When I get the statements I will give you a thesis on this proposition.

Q. We will do our best to furnish you the reports.

A. Your "best" is painful, sometimes.

1193 Q. Mr. Kelsey, you say that a switchboard never wears out in six years?

A. Never has been any board that could possibly wear out, Mr. Frank.

Q. In the Enid case didn't you testify that a switchboard wears out in six years?

A. They had in the Enid case an Old Kellogg switchboard when the Bell Company bought it, and the Bell engineers scrapped it, and it was probably used somewhere else. You fellows never scrapped that board but moved it somewhere else as it was just as good as it was when it went in.

Q. Let me read your testimony in the Enid case: "The Indianapolis people after keeping up their switchboard as best they could found themselves utterly face to face with a new switchboard, found themselves absolutely face to face with \$480,000 new money to get that switchboard and put that plant up. The question is asked,

'Where is your renewal reserve'? Had they adopted their \$5.50 per telephone per year from the very start they would have had just enough money there to pay \$480,000. That was my first demonstration of this Fisk and Robinson \$4 reserve'.

A. Sounds good, doesn't it?

Q. "That was my first demonstration of this Fisk and Robinson \$4 reserve."

A. Thank you; go right on.

Q. Then the question was asked you, "That condition was brought about by what?" Answer: "The switchboard wore out." Question: "How long in service?" Answer: "About six years."

A. You know why it wore out?

Q. Question: "It had been such a busy board it had actually worn out? Is that the way with switchboards?" Answer: "There are switchboards in Philadelphia in seven years." Question: "That was one of the Kelloggs that wore out?" Answer: "Yes, sir." Question: "You would like to qualify what you said in regard to the quality of the goods?" Answer: "We are making better stuff now. What we made eight years ago is not what we make today." Question: "So you would not ask this commission to take what the Kellogg made eight or six years ago as a basis to make an estimate on, would you?" Answer: "No, sir." Question: "Then if your company is making better boards now, and made four boards a short time ago, this commission would not be warranted in basing estimates upon stock of that kind?" Answer: "Your switchboard is a very small percentage, of course, not more than 20 percentage in art—then you have 40 per cent." There is an illustration of a switchboard that did wear out?

A. Well, now look here! What about an automobile built in 1902? Would you drive one around the streets today? It is the same with switchboards—the change in art,—and it never wears out.

Q. But you made a statement in your testimony that switchboards never wear out?

A. They don't; and for this reason: You change them on account of the change in the art before they wear out.

A. There is your testimony of where one wore out, and it took \$480,000 to replace it, and they had no money in their reserve fund?

A. And which, at the rate of a certain amount, took care of it, and did.

1195 Q. And what is that amount?

A. I have tried always to demonstrate that figure, and have been trying to demonstrate it here.

Q. So reserves for replacements and switchboards are absolutely essential?

A. Say, I preached that before you folks did, years ago through Telephony. You will find that a bank has to have reserves—we have all got to have reserves—an individual has got to have them or be in the poorhouse.

Q. Mr. Kelsey, if one plant is 75 per cent underground and another 75 per cent overground, will it take the same amount of reserve for both?

A. Certainly; but it would leave one with a little different reserve.

Q. In other words, if a man's plant was all underground, everything was underground and nothing was where the wind could get to it, you would allow that plant the same amount of reserve for replacements that you would one entirely exposed to the weather?

A. Certainly I would until I knew better.

Q. But, Mr. Kelsey, a practical engineer——

A. (Interrupting.) Who are the practical engineers? Name one.

Q. Well, J. J. Carty.

A. Is that so? I presume he is; he is a hired man.

Q. He is vice president of the American Telegraph & Telephone Company.

A. Yes, sir; that sounds very good.

Q. And C. A. Gates.

1196 A. Charlie Gates is a wonder.

Q. And F. L. Rhodes.

A. Well, Francis Leland—I wouldn't consider him as good a telephone man as Mr. Gates.

Q. And Mr. Hoag.

A. I never heard of Mr. Hoag.

Q. You never read the testimony in this case?

A. I am not interested in anybody's testimony in this case. They are putting me up for you to tear to pieces.

Q. Mr. Player?

A. Oh, I have known George a long time.

Q. Those men are practical engineers?

A. Is George a practical engineer?

Q. Isn't he?

A. I don't know.

Q. Is Mr. Gates a practical engineer?

A. He is a theoretical engineer, but he is a hired man; Pennell—there is a hired man.

Q. Is he a practical engineer?

A. Oh, yes.

Q. Now, if these men think that a larger depreciation ought to be set aside for a plant exposed to the weather, you disagree with them?

A. Yes, because Mr. Pennell does what the company wants him to do—that is, what they want him to think; tell that to Pennell. Charlie Gates, I believe, will agree with me in his private opinion; you can't tell me that he won't, but a hired man never can be classed as an engineer.

Q. Is George Player a hired man?

1197 A. I odn't know,—he has been.

Q. Topping?

A. I helped start Topping and tried to throw him a little business,—I know all these boys from birth.

Q. You know them, both when they testify that the percentage is——

A. (Interrupting.) They don't know what they are talking about. Topping dosen't know what he is talking about,—he trained in your

little school. If you will give me a boy for four years he will talk Kelsey all his life.

Q. How many are talking Kelsey in the United States?

A. A lot of them,—may be more than are talking Frank.

Q. Frank is not an engineer; he is only just a lawyer. Q. Mr. Kelsey, you have had quite a good deal of experience as an engineer. What do you say is a reasonable fee for engineering a telephone plant?

A. Well, any reasonable fee is all you can get.

Q. Well, would 10% be a reasonable fee?

A. A lot of engineers would love to get that, if they could.

Q. Well, what is this engineering society, American Society of Civil Engineers?

A. I have forgotten all about it. I don't know what you are talking about.

Q. Well, engineering societies have fixed on six per cent, haven't they, as an engineering fee?

A. Well, they may have as a whole, but each one of them will sneak out and take it on a two per cent basis rather than lose it. I don't think there are any telephone plants being engineered on the outside. That business is dead.

1198 Q. Well, you would be open to employment?

A. No, sir.

Q. As engineering a plant?

A. No, sir, i have quit.

Q. You wouldn't undertake to engineer a plant?

A. I would not.

Q. Mr. Lyndon could engineer a plant?

A. I presume that is Mr. Lyndon's business. You couldn't hire me.

1199 *Testimony in Support of Assignment of Error No. 5, Relating to Rate of Return.*

GEORGE L. WILSON, a witness for the plaintiff, was sworn and testified as follows:

Direct examination.

Questions by Mr. Duls:

Q. State your name please.

A. George L. Wilson.

Q. How long have you lived in Houston?

A. Since June 1, 1914.

Q. What business have you been engaged in?

A. Real estate. Buying and selling property, and making loans on real estate.

Q. Has that been your principal occupation?

A. It has been my exclusive occupation.

Q. I wish you would state to the court in a general way just what

your qualifications are that enable you to judge as to the value of real estate in Houston?

A. I may state that real estate has been my sole occupation all my life. I was born and brought up, you might say, in a real estate office, in my father's office at Joliet, Illinois, and I operated there and at Chicago, and while in Chicago on two or three different occasions I have been appointed by different courts to appraise property for receiverships, and cases of litigation.

Q. You do not remember what courts they were, and when they were?

A. I cannot recall now. It has been several years ago, but the most of the property was located on the South Side of Chicago, and since coming to Houston I have been following real estate and loan business, and I have been called on by private investors in several instances to appraise real estate for loans, and in one instance I was called on as a witness, expert witness, but never was put on the stand in that particular suit. That was the only suit I was ever called on here in Houston.

Q. Have you a real estate office here in Houston?

A. Yes, sir, 617 Union National Bank Building.

Q. You have had that office ever since you came to Houston?

A. Yes, sir.

Q. Since 1914?

A. Yes, sir, I haven't had that particular office, but have been in that same building ever since then.

Q. You have operated in real estate here in Houston since 1914?

1201 A. Yes, sir.

Q. Mr. Wilson, in stating your qualifications you testified you were also in the loan business?

A. Yes, sir.

Q. Loaning money on real estate?

A. Yes, sir.

Q. I want to ask you what rate, or at what rate would a loan be made on business property in Houston?

A. Usually around six per cent; that is, well located business property. You might say down-town property. That is the standard universal rate, six per cent.

Q. At what rate would you loan money on residence property in Houston?

A. On South End property——

Q. That would depend on the locality?

A. Yes, sir, entirely. On South End property where it is usual to loan about fifty per cent on the property, you can reasonably figure on seven per cent. In the Heights and the Fifth Ward you would have to figure eight per cent. The rate is entirely based on the merchantability of the property. How much the man, in event he had to acquire the property under foreclosure,—what probably chance of selling it immediately and getting his money out of it.

Q. You don't think you could place a loan on residence
1202 property for less than seven per cent?

A. On the basis of fifty per cent of its value, I don't think
I can.

Q. These loans you are speaking about would be first-lien loans?

A. Absolutely.

Q. Now, at what rate would you lend money on farm property
in Harris County?

A. Improved farms?

Q. Yes, sir.

A. I am making one loan now of about thirty thousand dollars out
near Genoa on the basis of seven per cent. Ordinarily farm prop-
erty runs between seven and eight per cent. I made one loan of a
hundred thousand dollars near Webster in February on the basis of
eight per cent.

Q. February, 1919?

A. Yes, sir.

Q. Now, on unimproved farm property, what is the rate?

A. The rate is eight per cent on that. It all depends entirely on
the location.

Q. Do you know whether or not the rate would be different on
cattle ranch property, land used for the purpose of a cattle ranch?

A. In Harris County?

Q. Yes, sir.

1203 A. No, sir, it wouldn't make any difference.

Q. It would be around eight per cent?

A. Yes, sir. The Federal Farm Loan bank, however, is making
on improved lands loans on the basis of $5\frac{1}{2}$ per cent, forty years'
time, but the private investor never would agree to make such a
rate. I never have been able to make a rate like that.

Q. You have never been able to get the money at that rate, have
you?

A. No, sir. The investor will not loan his money out at that
low rate. In one instance I had a client, Mr. John Gaillard of
Goose Creek, he makes all his loans at seven per cent. I made a
loan for him of ten thousand dollars on the 23rd of December at
8 per cent, but on South End property he has been making recently
a seven per cent rate. He used to make it at six, but he said at
the purchasing power of the interest on the basis of six per cent
he couldn't get along with it, and he had to raise the rate one per
cent.

Q. Do you make any loans on oil property?

A. No, sir, not as such. I have made a loan on prospective pos-
sible oil property at Goose Creek. I made one loan down there for
six months, on Mr. Holliday's land—

1204 Mr. Howard: I don't think this record should be encum-
bered with instances of individual loans Mr. Wilson has
made. He has already stated the general rate from a good
many standpoints.

Q. Mr. Wilson, I want to ask one more question. What determines the rate on which you will make a loan on property, on land, does the risk enter into it?

A. As a rule, yes, sir. What they call the moral hazard, the personal element, and then again the possibility of selling it in the event the lender has to take it in. In other words, the merchantability of the property, and the accessibility of the property. You take property away from transportation and away from roads, it will naturally take a higher rate than property that is readily accessible.

Q. The risk is an important element?

A. Yes, sir, very decidedly.

Q. You have been speaking of first-lien loans. What about second lien loans, what rate will apply to those loans on the class of property you have been testifying about?

A. That depends largely on the amount of underlying first-liens. If you have got a loan of fifty or sixty per cent on first mortgage, your second loan is going to cost you a lot of money. In 1205 but one instance I have confined myself exclusively to first lien loans.

Q. What do you mean by "a whole lot of money?"

A. Probably a short time loan will draw eight per cent, and as high as ten or fifteen per cent.

1206 F. M. LAW, called as a witness by the plaintiff and testified as follows:

Direct examination.

Questions by Mr. D. A. Frank:

Q. Will you please state your name to the Court?

A. F. M. Law.

Q. Where do you live, Mr. Law.

A. Houston.

Q. What is your business?

A. Vice-President of the First National Bank.

Q. Is that the First National Bank of Houston?

A. Yes.

Q. What is the capital stock of your bank?

A. \$2,000,000.00.

Q. That's the largest bank in Houston, isn't it?

A. Yes, sir.

Q. How long have you been in the banking business?

A. Since '97,—about twenty-three years.

Q. Most of that time in Houston?

A. No, between five and six years in Houston.

Q. Are you familiar with the interest rates charged in Houston and the return usually paid upon capital invested in business enterprises, in this city?

1207

A. Yes, sir.

Q. What is the usual rate of interest charged in Houston?

A. Well, prime commercial paper six and three-quarters and seven per cent,—that's the best class of commercial paper.

Q. What is the usual rate of interest charged on real estate loans in the city of Houston at the present time, Mr. Law?

A. What classes of property?

Q. Well, take the very best class of business property on Main Street in Houston?

A. You are speaking now of a new loan?

Q. Yes, sir, a new loan.

A. To be negotiated on this market?

Q. Yes, sir.

A. Seven per cent, I would say.

Q. If a man started to put up a steel building on Main Street he possibly would have to pay as much as 7% for a first mortgage loan?

A. I think so, on this market.

Q. On what per cent of appraisal would that loan be fixed if granted?

A. Fifty or Sixty per cent.

Q. That is if a man were putting up a building on Main St. that would cost a Million Dollars, that is if that was the amount the building was appraised at,—a Million Dollars, he could borrow 1208 row around \$500,000 or \$600,000?

A. Yes, sir.

Q. And at what rate of interest?

A. Around 7%. I happened to know of some transactions that have been consummated here in the last few weeks, at that rate.

Q. What per cent would he have to pay if he borrowed money to put up a residence, somewhere in Houston?

A. Well, he would be compelled to pay a little more, from 1% to 2% more.

Q. And that would amount to 8% or 9%?

A. Yes, sir.

Q. Do you happen to know anything about farm loans?

A. No, I know very little about farm loans.

Q. Where capital is invested in business largely, Mr. Law, in the City of Houston and not secured by a mortgage, would the rate required to get the money be more or less than a secured loan?

A. Well, of course, they would charge more, other things being considered.

Q. Suppose, Mr. Law, that a telephone company were organized in the City of Houston to build and operate a telephone system in this city, such as the Southwestern Telegraph & Telephone Company now has, requiring the investment of six or seven million dollars, what returns would have to be paid upon the stock in order 1209 to sell the stock in Houston?

A. Well, that's rather a hard question to answer. I would say a minimum of 8%, and I doubt if it could be sold on that basis.

Q. You think it would take at least 8% to sell it?

A. Yes.

Q. What portion of the stock do you think could be sold in this city?

A. Well, I think, a very small proportion.

Q. That is—

A. (Interrupting.) I don't think this market would absorb securities of that kind at this time.

Q. Well if you make the rate high enough at this time?

A. Oh, yes, if you make the rate attractive I have no doubt it could be sold.

Q. What rate would you have to make it in order to attract money here in Houston?

A. Well, I can't give you a catagorical answer to a question like that; I would think though that to make it attractive you would have to hold out a reasonable hope and expectation of around 10% dividends,—10% returns.

Q. Would the money that was obtained for such an investment have to be obtained in competition with other investments, in the City of Houston?

1210 A. Oh, yes, naturally.

Q. And would have to pay about as high a return as other investments in the City of Houston pay?

A. Well, of course, more things are to be considered in looking at an investment than the mere matter of returns; On some classes of investment an investor will be satisfied with a smaller return than he would on other classes; those that are of a very conservative nature, an investor would naturally be satisfied with a smaller return on them,—those that have less hazard to them.

Q. In your judgment is a public utility subject to more or less hazard than the average business in a community?

A. Well, I am not an expert on that, but am rather inclined to believe it would be more of a hazard.

Q. And would require a greater per cent of returns?

A. Yes, sir.

Q. How would you compare the hazard of an investment in the stock of a telephone company in the City of Houston with a loan on real estate, with a 50% appraisal in the City of Houston, which would be the more desirable?

A. At the same rate of return?

Q. Yes.

A. I believe I would rather have the real estate. That's a matter of opinion, of course.

1211 Q. It would be safer, would it?

A. Yes, if the real estate was properly appraised and only 50% loaned on it, I don't think there is anything safer than that. I think it is a safer investment than the corporations you spoke of.

Q. How would the risk compare between an investment of, say, \$500,000.00 in the stock of a telephone company operating in the City of Houston, compare with an investment of \$500,000.00 in bonds of the same company, which would be the more safe,—more secure?

A. I think the bonds where they are properly drawn are consid-

ered more secure, generally speaking, than stock. Did you ask me now how I would compare this with real estate loans?

Q. Well, How would you?

A. Well, I would stick to my original statement, that I believe that real estate loans against a property that's properly appraised, and on the basis of not to exceed 50% being loaned, is the safest loan we have.

Q. In other words, if you had a customer of your bank who wanted some financial advice and he had a chance to invest \$500,000 in the stock of a public utility in Houston, or \$500,000 in a real estate loan, there wouldn't be much doubt in your mind which you would advise at the same rate of interest?

1212 A. Well, of course, it would depend on the particular case; an investment in the bonds might be a more easily liquidated transaction,—they might be more easily converted.

Q. I asked you as to stock. If the investment is in stock there wouldn't be any doubt as to which would be best?

A. No, I would think the real estate loan would be better from the standpoint of safety.

Q. Under the circumstances, Mr. Law, you think in order to sell stock in a company, such as the Southwestern Company, operating in the City of Houston, alone, that it would take at least 10% to attract the money, do you?

A. Well, I think I said a minimum of 8%.

Q. Well, that would sell some of the stock?

A. But in order for you to right now, on this market, place any considerable amount of any stock, I believe, it would have to carry with it 10%.

Q. Ordinarily the way these things are done is to give a bonus of stock, isn't it, Mr. Law?

A. Yes, that's very frequently done, but whenever I find that's the case though, I don't want any of the stock.

Mr. D. A. Frank: You may have the witness.

1213 Cross-examination.

Questions by Mr. Howard:

Q. You have been in Houston quite a number of years, between ten and a half and—

A. (Interrupting.) Between five and six years.

Q. Where did you come from here, Mr. Law?

A. Beaumont.

Q. Well, you have been in this South Texas country for a good many years?

A. Yes, I have lived here all of my life.

Q. Mr. Law, your bank has during the past five years loaned thousands of dollars at a rate of 6% interest, haven't you?

A. Yes, sir.

Q. You are loaning some now at 6%?

A. Very, very little.

Q. Those loans were not even real estate loans, were they?

A. No, they were short time commercial loans.

Q. Now, you loan a great volume of money to carry mercantile concerns, and industrial concerns, don't you, Mr. Law?

A. Yes, sir.

Q. And there you have, so far as the loan is concerned, in speaking of security, in the sense of the security you have, you
1214 have no security at all, except the individual, the party and the business standing and whatever you can get, in your judgment, to bear upon the loan?

A. Yes.

Q. These loans, all bank loans, I don't mean to say every loan, but bank loans in their nature, ordinary bank loans, many of them have quite a considerable element of hazard, have they not, Mr. Law?

A. No, sir, we don't think so.

Q. Well, you frequently do lose money, in fact, all banks do in quite substantial amounts, on failures of different mercantile concerns, particularly in the days when we had failures, before everybody had money? We, of course, all know that we have had comparatively few failures during this inflated period.

A. Yes, very few.

Q. But prior to that the Bankruptcy Court was congested up to four or five years ago?

A. Yes.

Q. You were often a creditor in a bankruptcy proceeding, were you not, that is, you in connection with your bank?

A. Yes, as I say, my experience in Houston has only been a little more than five years in duration and just before I came here there was a good deal of that sort of thing; there has not been very much since I have been here.

1215 Q. But that hazard is present more in commercial loans, and in ordinary bank loans than it is present in loans that are secured by liens upon property, that's true isn't it, Mr. Law?

A. No, sir; I don't think so.

Q. Well, you have sustained quite frequently a substantial loss in a loan, have you not, and you charged off different sums, twenty thousand, thirty thousand and fifty thousand dollars?

A. Well, occasionally, but not frequently. We would go out of business if we did that frequently.

Q. I understand, but then you rarely ever hear of anybody on secured loans losing even that substantial amount of money, do you, Mr. Law?

A. I can't agree with you on that, because sometimes your security turns out to be quite a disappointment to you.

Q. As between fairly well secured real estate and ordinary commercial loans, which do you consider the safest loan from the standpoint of safety?

A. Well, as I stated awhile ago, I think there isn't any security quite as sound and dependable as good real estate loans where properly taken.

Q. Do you remember that probably for the last fifteen years in this community, that 8% was considered a fair rate for ordinary small loans from \$1,000 to \$5,000 on real estate security, and that
1216 10% was the amount charged by these people who built houses and took two or three hundred dollars down. You are familiar with that kind of transactions?

A. Yes, sir, that's true.

Q. Now, during the last three or four years, hasn't there been a downward tendency and hasn't the ordinary well secured loan been placed at 7% pretty much, and that it was difficult to get 8% on any fairly well secured real estate loans?

A. Yes, that's true up to a short time ago.

Q. Up to a short time ago when there was some ruling of the Federal Bank that has made money a little more difficult to get, they put on a little tightening up process, about a month or six weeks ago, and had a tendency to increase the rate a little?

A. Yes, and even a little before that rates were on the increase.

Q. A great many concerns are loaning money here in Houston and in the vicinity of Houston, at a rate as low as 6%?

A. I don't know of any.

Q. Well, I will put it a little differently, for the last two years they have been loaning money around 6%?

A. Yes, I have known of that.

Q. And some as low as 5½%?

A. I don't know of anything lower than 6%, there may
1217 have been some lower.

Q. The average long-time loan on business property here that was placed more than sixty days ago, will hardly carry over 6%, will it, upon business property?

A. Longer than sixty days ago. I don't think any real estate loans in Houston—

Q. (Interrupting.) Well say six months ago?

A. The best real estate loans went at 6% up to say about six months ago. I think you are correct about prime real estate loans.

Q. And there was a kind of a feeling until that time that if a bank charged more than 6% it was charging just a little bit more than should be charged?

A. Now, I hardly think it is fair to make a comparison between,—you understand that a National Bank does not make real estate loans, they cannot and do not, and, therefore, it is hardly fair to make a comparison between a concern which makes real estate loans, and individuals, and corporations, and a bank that makes commercial loans. The bank does not depend altogether on the rate of interest received. We really have another compensation. We rarely, if ever, lend money in considerable amounts,—commercial amounts, where we don't have what we call a "Compensating Balance" against it and so we are getting 6%, and also are getting
1218 the use of a considerable amount of the loan at the same time.

Q. In other words, you loan a man his own money?

A. Yes.

Q. But the prevailing rate on a real estate loan up to a short time ago was 6%?

A. On a prime loan, yes.

Q. Mr. Law, in regard to public utilities and building bonds and stocks, of course, a stock certificate in any corporation, as you know, merely evidences a part interest or share in the assets of the concern?

A. Yes, subject to the debts.

Q. Just evidences part ownership of the assets of the company?

A. Yes.

Q. And of course, the value of the shares depends entirely upon the assets?

A. Yes.

Q. And that is true with reference to a public utility?

A. Yes.

Q. And if a public utility is conservatively financed, and has dollar for dollar well invested in its assets, the shares sell more readily than one not so wisely financed and where the assets are not present?

1219 A. Yes.

Q. Then the same way with the bonds,—if any mercantile or industrial or public utility enterprise,—suppose that the men going into it are men of some means, does it not ordinarily?

A. Yes.

Q. In other words, you don't undertake to separate big commercial concerns, or big industrial concerns, or big public utility concerns?

A. No.

Q. You pre-suppose that the men going into it have some means?

A. Yes, they certainly should have.

Q. And if they get together and pool a certain amount of assets and put into any one of these enterprises those assets, and then undertake to further add to their business by means of the issuance of bonds, the returns at which those bonds will sell will depend almost entirely upon the proportion that the bond issue bears to the assets, will it not?

A. Well, I wouldn't put it quite that strong. It would depend very largely on that, yes.

Q. Then if a telephone company or a street railway company puts in money, and it is honestly and well invested, say, to the extent of \$3,000,000, and they issue a Million and a half in bonds,
1220 and then extend their plant,—put the money back into the service, those bonds would sell much more readily than if they undertook to issue a Million Dollars worth of bonds?

A. Yes, the security would be better.

Q. So then in its least analysis this difficulty about discounting bonds and paying commissions, and exorbitant commissions, through one source or another, depends upon the manner in which the company is financed and its affairs are handled. Those things are things that you have to consider in determining the sale of any bond or any security?

A. Well, now, it would not,—why you can't stop right there

and not go any further; certainly a financier will be very much interested in his security, and if the bonds were not in excess of 50% of the real value of the property,—he wants to know if the security is there,—a reasonable security, and then they will go further and he wants to know about the returns, wants to know if the money is needed for that business, and whether or not it will earn money.

Q. Just about how many loans do you make on security at all? And then whether or not a man is a prudent man instead of a spendthrift, in making loans, you always consider these things, do you not, Mr. Law?

A. Oh, yes.

1221 Q. One large trouble then about this difficulty with reference to the excessive cost of money might be attributable to the fact of the uncertainty of every paying that bond as well as to its returns?

A. Yes.

Q. And where it appears that a concern has issued bonds to the full value of its property, or perhaps a little more, as is frequently the case—

A. (Interrupting.) They certainly would have to pay more if the bond wasn't well secured.

Mr. Howard: That's all, Mr. Law.

Redirect examination.

Questions by Mr. D. A. Frank:

Q. Have you heard what the Gas Company had to pay for their re-funding bonds, recently?

A. No, sir; I don't believe I have.

Q. Did you say that the interest rate was going up or going down in this community?

A. Well, it's going up. I look for it to go still further up.

Q. You look for it to go higher than it is now?

A. Yes.

Q. What is the greatest security when you make a commercial loan,—what is really the big security,—the real security in
1222 ordinary commercial loans?

A. Well, the assets and the character of the business; the assets of the business and the character of the men who are running it.

Q. Mr. J. Pierpont Morgan said that character was the biggest asset he had on his loans. I think that has been quoted by a great many bankers?

A. I never did believe he said that.

Q. That still is a very large element in making loans, though?

A. Oh, yes, so much so that no banker wants to have anything to do with any risk that he does not consider good morally.

Q. A commercial loan is made for a short time, also, isn't it?

A. Yes, sir.

Q. Whereas, if the loan is made on real estate a man usually has his money tied up for several years?

A. Yes, sir.

Q. Five or more years?

A. Yes, sir.

Q. If you loan a man money in a commercial loan, when you come to collect it you always get 100% of the loan if you collect it at all. That's what the face of the note is for?

1223 Mr. Howard: If he collects it all he is sure to get it.

(By Mr. D. A. Frank:)

Q. Well, that's true.

A. I am not sure that I got that question.

Q. If a man borrows \$500.00 from you, you expect to get \$500.00 back besides the interest?

A. We get the interest in advance, and so we get that, you know, whether he ever pays the note or not.

Q. And then you get the \$500.00 back?

A. Yes, sir.

Q. But if a man buys \$500.00 worth of stock, he may have an interest in the business, but if he starts to sell it he might get considerably less than \$500.00 for his stock?

A. Yes, I have done that several times myself.

Q. And so that is one of the things that you take into account in comparing a commercial loan with an investment in stock?

A. Yes.

Q. What do you mean by a prime real estate loan, Mr. Law?

A. Were, I mean, the best of its kind.

Q. You mean a loan on fifty or sixty per cent,—Do you mean a loan on a fifty or sixty per cent basis on a building on Main Street?

1224 A. Well, if you are considering business property in Houston, of course, that would be the best. However, there would be plenty of other business property here in Houston that might be considered a prime loan and not on Main Street.

Q. But it would be somewhere pretty close around?

A. It would have to be well located.

Q. And would have to be a piece of property that was rented very easily?

A. Yes, would have to pay a good return.

Q. And that kind of a loan would carry, you say, 7%?

A. I don't think and don't know of anything now that you can get for less than 7%.

Q. And on residence loans and loans that are not prime a man would have to pay 8% or 9%?

A. Eight or nine per cent. I happened to be talking this morning to a man connected with one of the biggest corporations in Houston, who has been lending money on business property and he said they would raise their rate to 8% or 9%.

Q. Mr. Law, if a corporation was organized in the City of Houston to build a plant like the Southwestern Telegraph & Telephone Com-

pany, as a local concern, it couldn't possibly be financed in Houston if it cost as much as \$6,000,000, it couldn't possibly be financed, that is, you couldn't get that amount of money together in Houston, could you?

1225 A. No.

Q. You would have to get the small investor in as well as the large?

A. Well, I don't think it would be possible to finance a thing like that if you would get the whole bunch in right now.

Q. What was the largest amount gotten up here during the Liberty Bond Loan Campaigns, in any one loan?

A. I think around Ten Million Dollars.

Q. And that was during the war when the people had their patriotism aroused?

A. Oh, yes; you bet.

Q. And it took everybody in town to get that?

A. Yes, and then they had to have a black board down there on the Court House Square.

Q. And it was a very difficult matter even then to sell Ten Million Dollars' worth?

A. It was that.

Q. Would a company that had Three Million Dollars' worth of assets, as assumed by Mr. Howard, that started to put out a Million and a Half Dollar Bond Issue, be able to get a very cheap rate, due to the fact that they were only issuing a Million and a Half Dollars' worth of bonds and due to the further fact that they had Three Million Dollars' worth of property?

1226 A. No, I don't think so,—don't think they could get cheap money.

Q. It would be necessary first to have good security, and necessary in the next place to pay a fair return?

A. Yes, sir.

Mr. Howard: My proposition is, when you hawk around securities, where bonds are issued to the limit, and in excess of the assets, why, of course, if you are going to have to hawk them around for sale, but I was asking Mr. Law if that would not tend to eliminate the excessive charges.

Mr. D. A. Frank: I believe that's all, Mr. Law.

Recross-examination.

Questions by Mr. Howard:

Q. You would not be as much interested in the returns if you had a Million and a Half loan on Three Million Dollars' worth of assets, as if you had a Three Million Dollar loan?

A. Of course, the better the security the lower the rate.

Q. And the less you would be interested in the returns?

A. Yes, sir.

1227 Q. You spoke about a big institution going to 9%. Have we got an institution of that kind outside of the Bankers' Trust Company in Houston that is charging 9% at this time?

A. I was talking to the President of a corporation this morning, and he told me that he felt like he had been sleeping on his rights and that he was going to increase his rates to 8% and 9%.

Q. It was not the Bankers' Trust Company?

A. No, sir.

Mr. Howard: That's all.

Redirect examination.

Questions by Mr. D. A. Frank:

Q. He asked you if it would be easier to float a Million and a Half Dollar bond issue on Three Millions Dollars' worth of assets than it would be to float a Three Million Dollar Loan. Could you possibly float a Three Million Dollar loan on Three Million Dollars' worth of assets?

A. I don't think so.

Q. It would be virtually the same as buying it?

A. Yes, sir.

Mr. D. A. Frank: That is all, Mr. Law. I thank you very much.

1228 The Master: Mr. Law, what, in your judgment, will be the trend of commodity and labor prices during the immediate future, say, extending over a period of from three to five years, from one to five years?

A. Why, your Honor, I of course, don't pretend to be a prophet, but it looks to me like we haven't yet reached the peak of labor prices or the prices on commodities. Those prices are going higher and then I believe, I hope that the decline from that high peak, whenever we get it, will be slow and gradual, but we will never get down to where we were before the war.

The Master: That's all.

Recross-examination.

Questions by Mr. Howard:

Q. Of course, Mr. Law, that can't be but a hazard, which any of us can give?

A. Just a guess, and it is not worth any more than anybody else's.

1229 J. W. HOOPES, a witness for the plaintiff, after being duly sworn, testified as follows:

Direct examination.

Questions by Mr. D. A. Frank:

Q. Will you please give your name to the stenographer?

A. J. W. Hoopes.

Q. Mr. Hoopes, where do you live?

A. Houston.

Q. How long have you lived in Houston?

A. A year and two months.

Q. What business are you in?

A. Bank.

Q. In the Banking Business?

A. Yes, sir.

Q. What bank are you connected with?

A. The South Texas Commercial National——.

Q. What position do you hold with them?

A. Vice-President.

Q. How long have you been engaged in the banking business?

A. Thirty-one years.

Q. Where have you been so located?

A. Well, I started in the City of Rockport; then I was in Gonzales, then at Manor, and Austin, and in Galveston, and four and a half years with the Federal Reserve Bank of Dallas, and then I came here.

1230 Q. You came from the Federal Reserve Bank to the South Texas Commercial National?

A. To the South Texas Commercial National.

Q. Are you or are you not familiar, Mr. Hoopes, with the interest rates charged in Houston, and the return usual upon capital invested in business enterprises in the City of Houston?

A. Why, I think fairly so, yes sir.

Q. What is the usual rate of interest charged on commercial paper in the City of Houston, Mr. Hoopes?

A. From 6½% to 7% and 7½% and 8%.

Q. What do you mean by a commercial loan?

A. Short time loans where the assets of the company shows a sufficient amount of liquidated assets to justify a commercial loan, what we call quick assets.

Q. Where a customer comes around and borrows a thousand dollars for three months, you call that a commercial loan?

A. Yes, sir.

Q. And the per cent of interest charged ranges from 6½ to 7½%?

A. Yes.

Q. What is the usual rate of interest charged in this city on real estate loans, and upon what per cent of the appraised value are they made upon business property?

1231 A. Why, of course, I am not as conversant with that as with the other, because the only loans of that character that I have heard of were in Beaumont, and the customer wanted 8% on business property, that was the rate specified and I am quite sure that the same person would want 8% here. I think, however, from what I have learned here that high grade loans have been around the neighborhood of 7%.

Q. That is, if a man wanted to make a loan on a first-class piece of business property on Main Street, the rate of interest would be 7%,—7% to 8%?

A. Yes, I think it would be 7%, I believe it would.

Q. Would that be just straight 7% or would there be some expense in making the loan?

A. Of course, there are always expenses paid in any loan, but those are paid by the man who makes the loan,—that's not up to the man who makes the loan.

Q. The man who makes the loan has to pay the expenses of making the loan?

A. Yes, sir.

Q. What is the rate of interest charged on real estate loans, not prime?

A. Well, they run—I know of several of that kind and they run from eight to ten per cent.

Q. That is in the City of Houston?

1232 A. Yes, sir.

Q. What connection, Mr. Hoopes, is there between the rate of interest charged and the risk and hazard of the business upon which the loan is made?

A. Well, it naturally follows that the greater the risk the higher the rate.

Q. There will be some business then in which the risk is so great that people wouldn't very easily put money into it?

A. Oh, yes.

Q. Would a telephone company, organized in the City of Houston, with six and a half or seven million dollars of capital to build a plant such as the Southwestern Company has in the City of Houston,—what return in your opinion would have to be paid upon the stock in order to sell the stock in the City of Houston?

A. Well, I don't know. I question very much whether you could finance a company like that here,—I don't believe you could.

Q. Well, if the company has a rate sufficiently high to pay a fair return, and it was reasonably certain that City Commission were not going to try to cut rates down to below a fair return, would it be possible to get some money here?

1233 A. Possibly so, if you got the rate high enough to make it attractive, but I don't know that you could finance a company of that kind here. My observation is that you could not very well do it.

Q. If you undertook to do it, what per cent would be the minimum rate of return necessary in order to attract local capital to the stock of such an association?

A. I think it would have to be mighty certain that it would pay from eight up to ten per cent.

Q. How much stock do you think they could sell in the City of Houston if it was certain that it would earn ten per cent?

A. That would be a mere guess on my part, I don't know, really I doubt if you could place it.

Q. And you doubt if it could be placed at even ten per cent?

A. You would have no more assurance that you could get it at that rate; it is always a question of what the terms are.

Q. What is your opinion of financiers generally with respect to the risk that a man takes when he puts his money into a plant like a telephone plant or any other public utility?

A. Well they always take it that a public utility is a risky proposition, and it is always subject to an incoming administration, which always makes it more hazardous than any other class of business.

1234 Q. That is regulation is looked upon as one of the hazards of the business?

A. Yes.

Q. Well, any money that should be invested or should be obtained for such a company in the City of Houston would have to be obtained in competition with other businesses in Houston, would it not?

A. Oh, sure.

Q. And a man would not put his money into the telephone business, if he could make more money and have a safer investment in some other line of business?

A. No.

Q. The City of Houston is a rather prosperous city, isn't it?

A. Yes, sir; the bank deposits here run around in the neighborhood of \$100,000,000.00 about second in the State.

Q. Would you consider the hazard of an investment in a public utility subject to regulations greater or less than an ordinary business venture?

A. I think it would be greater.

Q. How would you compare the hazard of a public utility—the investment in the stock of a public utility in the City of Houston with a loan on real estate on the basis of a 50% appraisal?

1235 A. Why, the real estate loan would be preferable, very much so,—less hazardous, I think, by far.

Q. Well, if a man could loan his money at 7% on a prime real estate loan, or at 8% or 9% on real estate with a first lien, that would not be called prime, like a residence piece of property, would he or not be likely to prefer that to putting his money into the stock of a public utility?

A. If he was a sensible investor, I think he would.

Q. Even on a 10% basis for stock, you think he would prefer the real estate loan?

A. Yes, an investor looks on the security and the absolute return more than on a slightly increased rate.

Q. And in order to sell the stock of such a company, estimated at

Six and a Half Million or Seven Million Dollars, in the City of Houston, there would have to be a reasonable assurance that the rate of return would be more than 10%, and that it would probably be 11, 12 or even 15%?

A. In order to attract that amount of money, I believe it would be necessary.

Mr. D. A. Frank: That's all.

Cross-examination.

Questions by Mr. Howard:

1236 Q. Mr. Hoopes, did you ever run a country bank?

A. Yes, sir; that's all I know anything about.

Q. Country banks,—they don't think anything less than a rate of 10% is interest, do they?

A. Oh, yes, sir.

Q. They do?

A. Yes, sir.

Q. How long have you been engaged in a City Bank?

A. Well, I was five years in Austin and during that time I was connected with two country banks, which I examined and went into about two or three times,—three times a month. The banks were located at Buda, Manor and Pflugersville.

Q. A great many country banks charge more than 10%?

A. I don't think so,—not legally, that is all they can legally charge.

Q. But in an indirect way, they charge 10% for money for eight months, and things of that kind, don't they?

A. No, sir.

Q. You have never seen that done?

A. No, sir; excepting short loans where they make the minimum charge of 50¢ on any loans.

Q. But they do make crop loans, say in March and payable in October, and charge 10%?

A. All loans that they make of that kind amount to 10% per annum.

1237 Q. Mr. Hoopes, you said that you didn't believe that the people would want to subscribe for the stock of this Six Million Dollars corporation on account of the risk. Now, of course, the opportunity of a corporation to earn money determines largely, in fact almost controls the question of the investment in it, does it not?

A. I didn't catch the question.

Q. The question of the ability of a corporation or concern of any kind to earn money, you say controls largely the question of investment that people will make, that is, if it stands to earn money, has an opportunity to earn good money and makes good returns, that will make it attractive, would it not?

A. Well, they would want to take that wholly in connection with,—The safety of the investment has got something to do with it.

Q. Well, Mr. Hoopes, suppose, just passing from this interroga-

tory,—Suppose that we take a company,—take the company that owns this company and it gets whatever profit that it may get from the operation, and in addition to that it owns another company which manufactures all of the equipment that goes into it, and this company buys all its supplies and materials for its use in the plant at such fairly large commissions with no way of checking up the profits of the manufacturing branch,—you understand now, 1238 another company, manufacturing company, and aside from the rate they get, the manufacturers of this equipment, they put it into this plant at whatever price they see fit to fix, it has no control over it and it stands in the nature,—there is no free agency about buying stuff at other places—

Mr. D. A. Frank: That's all assumption, Mr. Howard.

(By Mr. Howard:)

Q. An arrangement of that kind would tend to make the stock much more attractive to a man who wanted to realize on his money, would it not?

Mr. D. A. Frank: I object to that most seriously, because it is a statement, and assumption that isn't true, and is not supported by the evidence in this case.

The Master: The hearing is before a Master; if the assumption, the hypothesis on which the question is based is not supported by the evidence, the answer will not have any effect whatever. I will give you your bill, however.

Mr. D. A. Frank: I want to call your Honor's attention to the fact that this witness is a banker in the City of Houston, and 1239 now to confuse him with a lot of statements that are not in the record and attempt to have him base his opinion on something that is not in the evidence is an unnecessary waste of time.

The Master: Mr. Hoopes may answer the question.

(By Mr. Howard:)

Q. Would that have a tendency, Mr. Hoopes, in the mind of the ordinary investor to make the stock more attractive to him?

A. Not unless he was interested in both concerns, no.

Q. I say his stock is in the concern which owns both of these concerns, for instance, the American Telegraph & Telephone Company owns practically all the stock of the Southwestern Telegraph & Telephone Company, and it is further in the proof that it is practically the owner in the same way, of what is known as the Western Electric Company; that the Western Electric Company manufactures practically all of the equipment that goes into the plant here, and the physical conditions are such and the arrangements between the parties are such that the operating plant has to buy all of its equipment from the manufacturing branch. You understand now that the American Tel. & Tel. Company own both of these companies, the

1240 one whose stock we are speaking about, and the manufacturing branch, wouldn't that effect the situation and have a tendency to make the stock more attractive to an investor?

A. Not if he didn't take it out of one pocket and put it in the other.

Q. You didn't get the question. You have been considering this thing merely as an operating telephone plant?

A. Yes, sir.

Q. Now, the American Telephone & Telegraph Company owns this plant, now, and it also owns the manufacturing plant which manufactures the product, and has the right to put them in here, and to put them in here at its own price——

A. (Interrupting.) They are, however, separate corporations as far as these stockholders are concerned?

Q. We are assuming for all intents and purposes that the same corporation,—that the American Tel. & Tel. Company owns not only the operating plant, but also owns the manufacturing plant?

A. That is, if you are a stockholder in the American Tel. & Tel. Company he gets the profits out of either one?

Q. Yes.

A. I think if they were making money out of the manufacturing business that it certainly would make it more attractive, yes.
1241 If it would simply be guaranteed to them as to what the return would be, certainly, yes.

Mr. D. A. Frank: As a matter of course, if it's in the record and the record shows that——

Mr. Howard (interrupting): We disagree very much about the record. Do you deny that the American Telegraph & Telephone Company owns ninety-nine and a fraction per cent of the stock of the Southwestern Tel. & Tel. Company?

Mr. D. A. Frank: You said it owned all of it.

Mr. Howard: I said "practically" all of it.

The Master: Let's go ahead.

(By Mr. Howard:)

Q. Now, Mr. Hoopes, it has been a fact, has it not, that up until a comparatively short time ago there has been a decrease from the interest levels that existed some eight or ten years ago?

A. Well, I think, Mr. Howard, that the rates perhaps have gone down some, but the security, the margin in there, has very materially increased.

Q. It has been difficult for men who have money to lend, the average little investor, of from one to Five Thousand Dollars,—loans of that amount,—small loans to obtain as much as 8% during
1242 the two years prior from October, 1919?

A. That's not been my experience.

Q. You haven't been right in this vicinity during that time?

A. No. The last time I was in this section I was in Galveston.

Q. Mr. Hoopes, I believe you were connected with the Federal Reserve Bank at one time?

A. Yes, four and a half years.

Q. Isn't it a fact that here a short time back the Federal Reserve Bank passed such regulations, which made it a little more difficult to get money, and had the effect of tightening—

A. (Interrupting.) Well, the regulations didn't; they raised the discount rate.

Q. Which makes it harder to get money?

A. Not harder, more expensive.

Q. Well it tends to deter a man from getting money if he have to pay a bigger interest rate,—if it makes it more expensive?

A. I don't think it would effect the investment in a mortgage or stock investment.

Q. Well, that was passed largely with a view of curbing speculation?

A. Yes, sir; stock speculation.

1243 Q. Mr. Hoopes, if that is the result of that, won't the logical sequence of it, the result of it eventually being to effect the prices of commodities?

A. Well, that's the theory of the great financial experts, yes, sir.

Q. And, of course, have a tendency to make a downward trend in commodities?

A. That's what they hope for, yes, sir.

Mr. Howard: I believe that's all.

Redirect examination.

Questions by Mr. Frank:

Q. What is the capital stock of your bank?

A. Capital Stock One Million Dollars and a surplus of a Million.

Q. I believe you stated that you never charged over 10% even as a country banker?

A. Except as to the minimum of a 50¢ charge on small loans.

Q. If you charged more than 10%, you might not only not have collected your interest, or might have had to pay double the amount under the laws of Texas?

A. Yes, sir.

1244 Q. Mr. Hoopes, he stated a hypothetical case to you which we deny, but irrespective of what arrangement might be made between two or more companies, operating here, if the company owns six and a half or seven million dollars' worth of property in the City of Houston, and it were sold to a local concern, and the local concern attempted to sell stock on the market in the City of Houston, they would have to have a fair return in order to sell it?

A. Well, they would have to have a pretty high return, I think, Mr. Frank, and that it would take a pretty good lever to pry out that much money on that size investment.

Q. Suppose they were spending more money than they were making, could they sell the stock at par?

A. I don't think they could, no sir.

Mr. D. A. Frank: That's all.

Mr. Howard: That's all.

1245 B. P. TIMPSON, a witness for the plaintiff, after being duly sworn, testified, as follows:

Direct examination.

Questions by Mr. D. A. Frank:

Q. State your name to the Court, Please, sir.

A. B. P. Timpson.

Q. Mr. Timpson, where do you live?

A. Houston.

Q. How long have you lived in Houston?

A. Practically all of my life.

Q. About how many years have you lived here?

A. Fifty years.

Q. About fifty years?

A. Yes, sir.

Q. What business are you in?

A. I am connected with the Houston Land & Trust Company.

Q. You are connected with the Houston Land & Trust Company?

A. Yes, sir.

Q. How long have you been in your present business?

A. I have been connected with the company about thirty years.

1246 Q. About thirty years?

A. Yes, sir.

Q. What is the character of the business done by that company?

A. Loans and mortgages.

— The loan and mortgage business?

— Yes, sir.

— Are you familiar with the interest rates charged in Houston, and the return usually made upon capital invested here in business enterprises?

A. Yes, sir.

Q. What is the usual rate of interest charged in the City of Houston on commercial loans at the present time?

A. At the present time, I think, from six to seven per cent.

Q. And what is the usual rate of interest charged on real estate loans, on prime security?

A. Well, on business property from six to seven per cent, and on residence property, from seven to eight per cent.

Q. And upon what per cent of appraised value in loans,—in making a loan on what per cent of the appraised value is the loan made?

A. On residence property, about 50%, and on business property from 60% to two-thirds.

Q. That is, from 60% to 66⅔%?

1247 A. Yes, sir; it would have to be very choice inside property to carry that though.

Q. Where capital is invested in a business venture and subject to the ordinary hazards of business, what return is usually expected and realized in the City of Houston?

A. On business investments?

Q. Yes.

A. Why, I don't really know. I am connected with one or two concerns earning around twenty per cent when business conditions were normal,—fifteen to twenty per cent, I should say.

Q. If a telephone company were organized in the City of Houston to purchase or build a telephone plant such as that now located in the City of Houston, and belonging to the Southwestern Telegraph & Telephone Company, requiring an investment of six or seven Million Dollars what return, in your opinion, would be necessary to be paid upon the stock in order to sell the stock in the City of Houston?

A. Well, it would have to be on the same basis of return as many other investments.

Q. What per cent of return do you think would have to be made?

A. Well, I suppose, around what good secured loans
1248 average from six to eight per cent, in other words, in order for them to purchase this stock there would have to be some assurance that the surplus earning would be a guarantee against a lean year in any way, you would have to say a net earning of somewhere between six and eight per cent, that is, the dividend returns. Of course, any well managed concern ought to earn more than that, so as to lay aside something for reserve or reserves.

Q. Which is more desirable, Mr. Timpson, a real estate loan of five hundred thousand dollars or the investment of five hundred thousand dollars in a stock that would pay the same amount?

A. Well, I think the element of risk considered would make the mortgage be the most desirable.

Q. If a widow came to you with some money from life insurance, would you advise her to put it in a real estate loan, or in telephone stock that was producing the same rate of return?

A. If my advice was asked, I would suggest the loan,—the mortgage.

Q. As a matter of fact to sell the stock wouldn't you have to differentiate in the stock as compared with a real estate mortgage loan?

A. I think so, the risk would be greater.

1249 Q. Do you happen to know, I don't ask you to tell me unless you care to, but do you happen to know what the average dry goods company in Houston makes a year?

A. No, sir.

Q. Or what the average bank makes?

A. No, I could not say.

Q. You don't happen to know?

A. No, sir.

Q. What is the rate of interest usually obtained in the City of Houston at the present time on mortgages, on residence property?

A. Right now seven and eight per cent.

Q. How much stock could be sold in a company having a capitali-

zation of from Six and a Half to Seven Million Dollars to build a telephone plant in the City of Houston?

A. How much stock could be sold locally?

Q. Yes.

A. I don't think you could sell very much.

Q. Well, if you put on a specially high return, you could sell some, couldn't you?

A. Very little. I don't believe that the people of Houston or in the South look upon that business with favor.

Q. Well, if you had a local concern here that was in the telephone business and you couldn't get money anywhere else, it would
1250 be possible to put the rate of return high enough to get people to put money into the telephone business.

A. Our local capitalists?

Q. Yes.

A. I don't think so.

Q. Would a ten per cent return attract local capital into the telephone business in the City of Houston?

A. Well, it would be attractive, but wouldn't be desirable because of the government requirements and restrictions; there would be that uncertainty that you would not know from one administration to another what they were going to do.

Q. Would a twelve or fifteen per cent return attract local capital into the telephone business in the City of Houston?

A. I don't believe I could answer that question except by qualifying my answer in this way: It would not be attractive to anyone who had opportunities to invest elsewhere, unless they had some assurance that the return would be more or less permanent, or in other words, they would get as much out of the investment as they would on a more favorable investment like a mortgage.

Q. So when you made the statement a few minutes ago about
1251 six per cent you had in mind a loan to a telephone company rather than a stock proposition?

A. No, I said a man who put an investment in that sort of business would naturally want the same return as on a mortgage, and not ten or fifteen per cent that he would get one year and nothing the next.

Q. Would or would not an investor in the City of Houston purchase six or eight per cent stock in a telephone business in the City of Houston?

A. On account of the character of the investment I don't believe he would.

Q. And you have your doubts as to whether or not he would invest in it at even ten per cent?

A. I think so. He would not; just because of the risk he wouldn't do it as the company's earnings ordinarily depend largely on the local administration and the public—the investing public know that and undoubtedly doubt their ability to pay their obligations, and therefore would not want the security at all.

Q. A telephone Company starting out in the City of Houston to finance a plant of this magnitude would have to obtain money in

competition with other businesses in the City of Houston, requiring money, would they not?

A. Yes, sir, certainly.

Q. And if the money was secured in some way it would
1252 take rather a large return in order to get the money?

A. Yes, sir.

Q. And you think that with even a large return it would be difficult to attract a sufficient amount of capital in Houston.

A. I think so, because of the uncertainty of it.

Q. Well do you consider that an investment in a public utility, subject to regulation, would be a greater or less risk than an ordinary business venture?

A. What do you mean by regulation?

Q. Regulation by the local city administration.

A. Well, I think under all circumstances the risk would be greater.

Q. In your judgment as a financial expert, which would be the more desirable investment, an investment in stock producing eight or ten per cent, in a telephone company in the City of Houston or an investment in a real estate loan producing seven per cent, a prime real estate loan, secured on property in the City of Houston?

A. Well, speaking for myself, I would rather have the mortgage at seven per cent.

Mr. D. A. Frank: That's all.

Cross-examination.

Questions by Mr. Howard:

1253 Q. Mr. Timpson, all people get more or less used to the same particular form of security, do they not, that is the ones that are more familiar with, and they are apt to be partial to a business or securities that they are quite familiar with, are they not?

A. Well, anything that's safe and suitable, Mr. Howard, I think.

Q. You have never given anything more than a passing opinion, have you, Mr. Timpson, to the telephone industry?

A. No, but we handled all sorts of securities, bonds, and stocks, mortgages and commercial loans.

Q. What is there about a telephone company investment that you consider particularly hazardous?

A. Well, I think, Mr. Howard, my criticism will apply not only to this company but to all other utilities,—that you are only permitted to earn what the local administration decreed.

Q. Now, on the other hand, Mr. Timpson, they are assured of all the earnings, and of all the patronage of the community, are they not? Competition for them is practically, eliminated.

A. Yes, sir.

Q. And that instead of being hazardous, you have the competition eliminated?

A. That's not guaranteed; you have had plenty of competition in the past in all lines of business.

1254 Q. The patronage is guaranteed?

Mr. D. A. Frank: But not the earnings?

A. We have had competition, both with the telephone and street cars and all, but the street cars,—we had a street car that ran a little line out here, and had two telephone companies.

Q. Have you noticed that at hardly any place is there any great amount of competition,—have you noticed that the tendency has been to the elimination of competition in public utility enterprises, for instance, I think, they all had, perhaps some competition in this city in years past.

A. Yes, sir.

Q. And all the competition has now been eliminated?

A. I think so.

Q. Then any public utility operating in the City of Houston today is assured of all the business of that industry, isn't it?

A. They have got the business assured,—the business, but not the rate. They get the business but don't get a proper return on it.

Q. But then it is worth something,—it is a compensating element to have competition removed?

A. No, not unless you permit them to earn the money.

1255 Q. But the ordinary industrial concern,—have any of them these protections in the way of eliminating competition?

A. No, but they have that freedom of movement and with the proper amount of trade they can build up and that always pays expenses,—they put themselves in position to make money.

Q. They can if they don't go into bankruptcy, but among the people who are going on and doing business speculation has been running rife for some years all over the country and is today,—that's one of the conditions.

A. There is a great deal of speculation all over the country, yes, sir.

Q. Up until the last few years mercantile and industrial failures were very common things, were they not?

A. I won't say many, but of course, I expect the percentage has been unusually large.

Q. Have you ever heard any statement as to the per cent of people who embarked in business and made a success of it?

A. No, I haven't.

Q. You never made any study of the statistics along that line?

A. No, sir. That's always well known that if there is
1256 a failure that it is due either to mismanagement or undercapitalization,—there is always some good strong reason for it. Any carefully managed business will survive and a failure is always due—

Q. (Interrupting.) If conditions are proper,—if conditions are favorable they will survive, but that is always open to mistakes of judgment and disappointment in matters that they had planned. They are all subject to those conditions, are they not?

A. Well, if the foundation of the business isn't properly laid, you are going to get into trouble. If you start a factory and put

all of your capital into the plant and then have no operating capital, then you will be embarrassed right away to start with.

Q. Did you notice a downward tendency in interest rates Mr. Timpson, from about 1917,—1915 up until a short time ago?

A. Well, interest rates in Houston,—I think for a period of about two years up to about six months ago, there has been an abundant supply of money here due to the fact of the suspension of development in business of all kinds, but conditions have changed very much in the last six or seven months.

Q. And now, you say, as I understand you, that secured 1257 business loans run,—well secured, first-class real estate loans of from six to seven per cent, commercial loans from six to seven per cent and residence real estate loans from seven to eight per cent?

A. At the present time, yes, sir.

Mr. Howard: That is all.

Redirect examination.

Questions by Mr. D. A. Frank:

Q. The advantage of having competition eliminated is not very much unless you are allowed to charge reasonable rates, isn't that true?

A. Why, yes.

Q. And if you are doing business at a loss, the more business you get the more you will lose?

A. I think so.

Q. When do you look for conditions to get back to normal?

A. Well, I don't know when that will be, but just as soon as we get our house in order and get straightened out. I think everything will get back, not absolutely to pre-war conditions, but very near; in other words—

Q. (Interrupting.) Have you made any investigation of the trend of prices of labor and materials in these last twenty years?

1258 A. No, I have not paid any close attention to it, but the change was very marked in the last four years, for instance, I am connected with an enterprise which employs common labor and before the war we were paying \$1.35 and \$1.50 a day for ten-hours work, and now we are paying \$3.50 a day for the same labor for nine hours; that increase has been steady since 1915.

Q. In the next two or three years you don't expect to get anybody to work for you for \$1.50 a day, who is now working for \$3.50 a day?

A. I do not know how soon that is going to come.

Q. What is necessary before this will come?

A. Well, people will have to come back to earth and work and produce.

Q. The inflation in the last two years has caused the prices of everything to go up, hasn't it?

A. Yes, sir.

Q. And interest has been one of the last things to go up?

A. Interest is the only cheap thing we have had here for quite a while.

Q. And even that is going up now?

A. Yes.

Q. Do you expect any time soon that the price of labor and commodities,—do you expect any decrease in the price of labor and commodities?

1259 A. My answer to that would only be a guess. I hope—we can't continue this way and have got to get back to work to produce things, or prices are bound to be raised.

Q. Do you think that the price of labor and material will ever be back to the place it was before 1914?

A. That's my opinion, but it is only a guess.

Q. For instance, the price of common labor now is about \$3.00 or \$4.00 a day as compared with \$1.50 a day?

A. Yes, sir; labor is about 35¢ or 40¢ an hour today as compared with 17½¢ to 20¢ an hour before.

Q. And you expect common labor to get back to \$1.50 a day, do you?

A. Yes, sir.

Q. Do you think it will be necessary to have a panic before that time?

A. No, I don't think so. The Federal Government is trying to help out that situation right now; they have put the brakes on and are trying to stop speculation which is one of the causes.

Q. Unions have nothing to do with the price of labor?

A. Unions?

Q. Yes.

A. Well, so long as they can, but I think they are getting near the end of their rope, right now.

1260 Q. And you are pretty firmly of the opinion that in order telephone stock to sell on this market it would have to produce not less than 10%?

A. Well, Mr. Frank, I think so little of it would sell,—I think I answered that once. I wouldn't want that at all,—I wouldn't want any street car company or any public utility stock.

Q. Even a public utility stock listed on the New York stock market?

A. Well, if you take the New York Interurban, I mean the Interboro, I wouldn't buy it by the bushel.

Q. Has that gone down in price?

A. Yes.

Q. Do you know what caused it to go down?

A. No, I don't know.

Q. Railroad stocks and all other stocks listed on the—

A. (Interrupting.) It is a local institution and is not permitted to earn the money. The price of labor has increased, and price of material has increased, and that, of course, has increased their expenses, and they are not permitted to earn the money, I suppose, that's one of the strongest reasons.

Q. Even standard stocks on the New York Stock Market have sold on a basis of 8%.

A. Yes, you can buy Great Northern today, preferred stock, 1261 around seventy-five or eighty on the basis of 7% dividends, and you can buy Southern Pacific around par, on the basis of 6%.

Q. And that's preferred stock?

A. No Great Northern is preferred stock; the preferred stock is 7% stock.

The Master: What is the book value of Southern Pacific stock?

A. I don't know, Judge. I have a statement down at the office. I have a little stock in it myself and it is considered very valuable stock and sold up to yesterday at about par, one hundred, and a fraction, and up to a few months ago it sold up to 112. They have a surplus.

(By Mr. D. A. Frank:)

Q. And even with a surplus,—they have a surplus and even then their stock is selling only at par?

A. Well it has sold in the last three months, I think, this year at 112, but after that decision——

Q. (Interrupting.) You don't know what the book value of the stock is on a share basis?

A. No, sir; I have it at my office.

Q. And as far as you are personally concerned, I believe you said you would rather have a real estate mortgage loan than any 1262 stock?

A. Not any stock.

Q. Any utility stock?

A. Yes, sir.

Mr. D. A. Frank: I believe that's all.

Recross-examination.

Questions by Mr. Howard:

Q. You don't like utility stocks very much?

A. Not lately, not with what they are going through.

Q. Mr. Timpson, among the financial men, isn't this tendency, upward tendency of interest rates, hasn't that been looked upon as the probable beginning of downward prices, making money more difficult to get and start——

A. (Interrupting.) Well, it is due, Mr. Howard, to a good many things. Of course, there is more developing going on, and that took local capital, a great deal of money, perhaps more money has been contracted to be spent here in the last six months than in the previous two and a half years, and that has created a demand for money.

Q. Mr. Frank spoke to you about labor unions, and the outlook in

the labor world. It is a fact, is it not, that since the railroads have been returned to the owners, why, we hear less talk of strikes?

1263 A. I think the labor unions realize now that they are in the hands of people who will not stand their demands any longer.

Q. And isn't it rather regarded as a start, a tendency towards normal, that the railroads have been returned to the owners?

A. No, I think that the price of labor is going to depend on the law of supply and demand. Contractors can get a better supply of common labor here today than a year or so ago, and that's due to two things, one is the return of the negroes from the army and the other is the influx of Mexican labor.

Mr. Howard: That's all.

Redirect examination.

Questions by Mr. D. A. Frank:

Q. Co-incident with the return of the railroad properties to their owners we have heard talks of increasing freight rates too, haven't we?

A. Well, that naturally follows after a big increase in wages, the cost of buying equipment and putting the road beds in shape.

Q. And in addition to that the law under which the railroads are returned to their owners provide for a number of things,
1264 such as the joining together of different railroad systems into one system, and a number of other things of that kind, and also gives authority to the Interstate Commerce Commission to fix rates all over the country, and all of that is likely to tend to the increase of freight rates?

A. I think so if the roads can show that they are entitled to it.

Q. If they show they are entitled to it, they are more likely to obtain it than before the war?

A. Yes, sir.

Q. And that will have a tendency to increase commodity prices?

A. Well, that's usual, and that will increase the cost to the consumer that much more.

Mr. D. A. Frank: That's all.

Mr. Howard: That's all, Mr. Timpson.

1265 C. A. GATES, who had been previously sworn, was re-called by the complainants and testified as follows:

Direct examination.

Questions by Mr. D. A. Frank:

Q. Mr. Gates, you have already been sworn and have testified in this case, have you not?

A. Yes, sir.

Q. Have you made any investigation, Mr. Gates, to see what money is worth in the City of Houston?

A. Yes, sir.

Q. Will you, in your own way, give us the benefit of your investigation along that line?

A. I have talked to various bankers throughout the city here, who are handling various financial properties of different kinds, and I have found that the interest rate on loans running from short time commercial loans from seven to eight per cent, and in some instances as high as ten. I have found that on business property the usual basis at the present time is around seven per cent on the better classes; on residence property, around seven, eight and nine per cent, depending on the location. I have tried to find some-
1266 thing on what other business were earning, because any business to get money has got to go in competition with other lines of business and it has got to pay what other people pay for money if it gets it. I have prepared a statement of the manufacturing industries in Houston showing their capital, value of their products, total expense, and the net, and I have figured the per cent of the net to the capital invested.

Mr. D. A. Frank: We offer this as Plaintiff's Exhibit #163.

(The statement was thereupon received in evidence, marked: "Plaintiff's Exhibit #163", Witness Gates, and is filed herewith.)

A. This information was taken from the Report of the Bureau of the Census, Census of Manufactures, 1914. It is the report of 1915, and these figures were taken from Vol. 1, pages 1492 and 1493,—of Vol. 1 of that report. Where there are more — three—
1267 where there are three or more firms engaged in the manufacturing of any particular thing, like carriages, wagons and repairs, that business is shown as a separate business, but where there are only one or two people engaged in an industry, the total is placed under the heading of "All other industries"; the idea being on the part of the Census Bureau not to show any individual's business or any single corporation's business. This statement indicates that the net return on the capital in 1914, and on a capital of more than \$25,000,000 was 15.36 per cent. There are in the list that is shown at the top of the first page of this exhibit—

Q. (Interrupting.) This is \$25,000,000 of capital invested and the net returns on that was 15.36 per cent?

A. Yes, sir. The total net is also shown which is \$3,907,171.00.

Q. And this was for the year 1914, before we got into the war?

A. Before we got into the war. Following on that sheet the various industries are listed, sheet one, I will just call your attention to a few of them. Automobiles, bodies and tops, had a little over Twelve Thousand Dollars invested, made a return of 103.70 per cent; Bread and other bakery products, with an investment of One Million, One Hundred ninety-eight Thousand Dollars made a return of 19.39 per cent; Coffee, roasting and grinding, with an investment of Two Hundred twenty-two Thousand Dollars, made a

return of more than 64 per cent; Foundry and machine shop products, with more than a Million and a half invested made a return of 21.42 per cent,—

1268 Mr. Duls: By the way I notice Ice Cream. What did Ice Cream make?

A. 24.68 per cent. Under the head of Newspapers and periodicals, printing and publishing, there is shown an investment of One Million, Eight Hundred Thousand Dollars, which made a return of 15.82 per cent; Publishing without printing, a return of more than 157 per cent; Oil, Cotton seed and cakes, is one of the smaller items, small returns, with an investment of more than One Million Six Hundred Thousand Dollars, made a return of 10.32 per cent. The smallest return on the list is the lumber industry with more than Six Hundred Thousand Dollars invested, which made a return of more than 8 per cent.

Q. The lumber people have recently doubled the price on their lumber, haven't they?

A. Yes, sir; lumber would be an entirely different story today. All other industries, being those industries in which there were one or two concerns interested only, show a total capitalization of more than Fourteen Millions, and a return of 12.59 per cent; on the sheet following appears a statement showing the number of establishments of each character, in each line of business, and the total number of persons engaged in that particular business, and
1269 the total number of wage earners, together with the total capital invested in that line of business. The total number of persons engaged in—includes the average number of wage earners, so that the difference between the two represents the office force or the executive forces.

Q. What is the total,—total number of establishments?

A. Total number of establishments was 276; total number of persons engaged, 7,036; wage earners were 5,607; total capital employed or invested was \$25,442,620.00. Now, on the sheet following, the third sheet, appears a list of the industries embraced in the statement, or in the nature of other industries, and the number of industries of each kind is shown there. For instance, artificial limbs, there was only one manufacturer; artificial stone products, there were two, and so on. I have also investigated the earnings made by the National Banks for the year ending, June 30th, and on the fourth sheet of this exhibit—

Q. (Interrupting.) June 30th, of what year?

A. 1918, which was the last report available.—the last report of the Comptroller of the Currency, that was available,—the report of the year ending June 30th, 1919, not yet being published, or was not at the time I made up the figures, shown on this report. Figures shown on this statement were taken from pages 234 and 238
1270 of Vol. 1, of that Report; Report of the Comptroller of the Currency of the United States. This statement shows—refers entirely to National Banks and it shows, first, the towns which we are considering taking the five larger towns in Texas, and Texas as a whole. The number of banks is shown in each town, for ex-

ample, in Dallas, there were five banks, the capital stock was \$4,650,000.00, the surplus, \$3,150,000.00; the total of the capital and surplus was \$7,800,000.00; total gross earnings and recoveries was \$3,374,000.00; the losses charged off were \$118,000.00; the total expenses, taxes, and so on were \$2,146,000.00; the total net additions to profits, and I have used that heading because it appears that way in the Comptroller's report, meaning the total net profits for the year was \$1,110,000.00, of which \$648,000.00 was paid in dividends. The net earnings to Capital and Surplus was 14.23 per cent; the dividends to capital were 13.94 per cent. The same items are given for each town. In Houston there were six National Banks, with a capital stock of \$5,500,000.00, a surplus of \$2,250,000.00, a total of capital and surplus of \$7,750,000.00; the gross earnings and recoveries were \$4,033,000.00; the losses charged off \$567,000.00; the total expenses, taxes, etc., were \$2,605,000.00; the dividends were \$489,000.00; net earnings to capital and surplus were 11.10
 1271 per cent, and the dividends were 8.89 per cent. It is interesting to note that the dividends to capital in Ft. Worth were 17.39 per cent; in Galveston 9.00, and in San Antonio, 11.68 per cent.

Q. What is the average of Texas?

A. Texas, as a whole, had 509 banks, with a total capital and surplus of \$58,918,000.00; their gross earnings and recoveries were \$21,709,000.00; losses charged off, \$1,829,000.00; total expenses, taxes, etc., were \$12,211,000.00; the total net additions to profits were \$7,669,000.00; dividends paid were \$5,358,000.00; net earnings to capital and surplus were 13.02 per cent, and the dividends to capital were 14.41 per cent.

The Master: Mr. Gates, did you happen to find out why the losses charged off in Houston were so large during that year?

A. I did not, Judge. They were practically one-third of all losses in the State; I did not have time to chase through the report. It is a very voluminous report, and I presume I could have found the details if I had gone over it, but I didn't go over it.

(By Mr. D. A. Frank:)

Q. The total gross earnings and recoveries in Houston were higher than any other in — State, were they not?

1272 A. Yes, sir.

Q. The total losses were also very much higher so were the total expenses including taxes, they were also very much higher, that's true.

A. Yes, sir.

Q. In other words, comparing this with Dallas, the total gross earnings in Houston were nearly \$700,000.00 greater, but the losses charged off in the City of Houston were \$450,000.00 greater, and the taxes and other expenses in the City of Houston were \$450,000.00 higher than in Dallas?

A. Yes, sir, that brought the net profits in Houston down to \$250,000.00 less than in Dallas.

Q. That is, the net profits in Dallas were \$1,110,000.00 and in Houston \$860,000.00?

A. That's right.

Q. So that the average net earnings to Capital and Surplus for the entire State of Texas, in the National Banks, was 13.02 per cent for the year 1914?

A. 1918,—for the year ending June 30th, 1918. The fiscal year of the Treasury Department ends on June 30th.

Q. If interest has been going up during the last year there would be a higher per cent say for the year ending, June 30th, 1919?

A. It would if expenses and taxes remain the same.

1273 Q. Is there anything else that you want to say about that, Mr. Gates?

A. I think not.

Q. Have you made any further investigation to see what would be a fair return in the City of Houston?

A. Why, yes, I have.

Q. Just give us the benefit of that investigation.

A. I have investigated the loan of the Houston Gas Company just put on the market for sale.

Q. You say that was a loan?

A. It was a bond issue put out to refund a bond issue that came due on the first of March of this year.

Q. Are you referring to the same loan described in the circular presented by Mr. H. Blair-Smith, one of the witnesses in this case?

A. I think probably it is the same loan, as it is the only loan, I understand, that the Gas Company is trying to float.

Mr. Duls: That's plaintiff's exhibit #140.

A. I have here a circular issued by Harris, Forbes & Company, in which they offer Nine Hundred Thousand Dollars, being the entire issue of first mortgage, 7% Gold Bonds of the Houston Gas Company, due March 1, 1923, at a price of ninety-seven
1274 and three-eighths and interest, yielding eight per cent.

These bonds are callable on any interest-paying date. If they are called on or before March 1st, 1921, the Gas Company will pay 101 and interest, and thereafter, on or before March 1, 1922 at 100 $\frac{3}{4}$ and interest, and thereafter on or before September 1, 1922 at 100 $\frac{1}{2}$ and interest. This circular in describing the bond issue states that these bonds are secured by the first mortgage of the Houston Gas Company, dated March 1, 1905, which, in the opinion of counsel covers all the property, rights and franchises of the Houston Gas & Fuel Company, and the outstanding bonds, reduced from the original issue of \$961,000.00 to \$900,000.00—I see that a reduction was made by the Gas Company in taking up the \$61,000.00, leaving \$900,000.00 even. They have been extended from their original due dates for three years to March 1, 1923. As the original mortgage secured the payment of only 5% interest per annum, the additional 2% to be paid for the three years of the extension has been deposited in cash under an arrangement whereby it will be paid to the bondholders on each interest date. Additional

bonds may not be issued under this mortgage. In other words, this is an issue of \$900,000.00 worth of bonds which is a first claim on the property of the Houston Gas Company.

Q. Is there anything to show what the Gas Company's property is worth?

A. There is a statement here of the outstanding stocks and bonds of the company; that statement shows that there is One and one-half Million Dollars in common stock outstanding, and Five Hundred Fifty Thousand Dollars in preferred, which is a 7% cumulative. Of bonds, there is this issue of \$900,000.00, which is a first mortgage, and \$806,000.00 of refunding and improvement bonds at 5%, and the gross earnings of the company are shown to be \$794,743.98; the operating expenses, maintenance and taxes, \$604,197.33; the net earnings, \$190,546.65. That's for the year ending, January 31, 1920. The annual interest on this \$900,000.00 is \$63,000.00, so that after paying the interest there is a net balance left out of the net profits of \$127,546.65 so that the net earnings are more than three times the interest requirements on the first mortgage bonds, and yet they are offered the public at 97 $\frac{3}{8}$ %, so that they will yield 8%. Now, knowing that bankers don't perform these services for nothing, I made some inquiries as to what the Gas Company made out of this bond issue.

Q. Give us the result of those inquiries, Mr. Gates?

1276 A. And I have here a letter from the Attorneys of the Gas Company, written to me at Houston, under date of March 9th, which reads as follows—

Q. (Interrupting.) March 9th of what year?

A. 1920. It is addressed to me at Houston. Their file number is "#G-390". "The facts, with reference to the refunding of the Houston Gas Company's bonds discussed in the attached circular,—” which is the same circular that was filed as an exhibit, (continuing reading from letter)—“are substantially as follows: “Some years ago the Houston Gas & Fuel Company, predecessor of the Houston Gas Company, issued bonds aggregating \$961,000.00 secured by first mortgage;”—

Mr. Howard (interrupting): \$961,000.00?

A. \$961,000.00 secured by first mortgage. (continuing reading from letter): “these bonds maturing March 1st, 1920. Anticipating this maturity the Houston Gas Company has for some time been actively engaged in an effort to get those bonds refunded. The only proposition which they could get which would in any event be accepted was made by Harris, Forbes & Company, who purchased Nine Hundred Thousand of the outstanding bonds, with the understanding that the rate of interest was to be raised 1277 from five to seven per cent, and that they should pay no more than ninety-one for the bonds. The Gas Company was required to take care of the additional sixty-one thousand of the bonds. The net result of the transaction is that the Gas Company receives ninety-one for seven per cent bonds which are extended for a period of only three years. The Company was unable to make a better arrangement though it used every possible effort

to do so, and it was only with great difficulty that this arrangement was effected. Yours truly, Baker, Botts, Parker & Garwood." They are the attorneys for the Gas Company.

(By Mr. D. A. Frank:)

Q. Have you made any calculations Mr. Gates, to show what rate of interest the Gas Company is paying on the loan made?

A. Yes, sir.

Q. Will you give us the benefit of them?

A. The Gas Company in the first place is required to take up the Sixty One Thousand Dollars of bonds, leaving Nine Hundred Thousand Dollars outstanding. They are then required to deposit with Harris, Forbes & Company so that it is available for use in paying the interest, the difference between the interest as secured by 1278 the original mortgage and 7%, which is 2% per annum for three years, on Nine Hundred Thousand Dollars,—or Fifty-four Thousand Dollars. Now, that interest is due at the present time, and the Gas Company is entitled to a credit for the interest on the interest on the deposit that they have made in advance; they are entitled to what that money would earn by paying it before it is due. It is a simple calculation and just to sum it up, without any details, that is, without going into any calculations as to interest on the interest, in other words, computing it simply and taking simple interest, I arrive at this: When the Gas Company pays these bonds, they will have to pay the face, or Nine Hundred Thousand, if it is a solvent concern, if it doesn't pay it all of its property is mortgaged to make that good. They will also have to pay the three years' interest at 5%, which amounts to One Hundred Thirty Five Thousand Dollars; they have already paid Fifty-four Thousand Dollars interest, which is 2%, bringing the rate up to seven per cent, but that has been paid in advance. If the Fifty-four Thousand Dollars were put out at the same rate of interest that the public is invited to subscribe for these bonds, 8% for half the period, which would be the average time, it would earn Six Thousand Four Hundred 1279 Eighty Dollars, in interest; in other words, the Gas Company, to sum the matter up, is going to pay One Million, Ninety-five Thousand, Four Hundred Eighty Dollars, and all they are getting out of it is Eight Hundred Nineteen Thousand Dollars. I haven't put in anything for the interest on the Eighty-one Thousand Dollar discount, which they pay in advance, and which they are entitled to charge interest on during the three year period; but dropping all consideration of interest the Eighty-one Thousand Dollars, they will have to pay One Million, Ninety-five Thousand Four Hundred Eighty Dollars for Eight Hundred Nineteen Thousand Dollars, which Harris, Forbes & Company paid, and the cost to them will be the difference between the two sums, which is Two Hundred Seventy-six Thousand, Four Hundred Eighty Dollars.

Q. For a period of how much time?

A. A period of three years; that's for the use of Eight Hundred Nineteen Thousand Dollars for a period of three years which is 33.82

per cent, or 11.14 per cent per annum. That is what they are paying for that money and that on a loan which, if their capitalization is reasonable, and I have every reason to believe it is, the bond issue is less than twenty-five per cent, less than one-fourth of their total capitalization, in other words, they probably have got three
1280 times the property value,—they have got four times the property of their bond issue, if they haven't any water, and I don't think they have, I don't know—I don't know anything about their physical property.

Q. And then the security—

A. (Interrupting.) And they will have to pay more than 7% if they call the loan. Now, there is a provision in the bond contract that the company can call the loan at any interest paying date, but if they do they must pay more than par; if they call it on September 1st, 1920, or March 1st, 1920, they agree to pay 101 and interest. I have made some figures just to show what rate that will cost the Gas Company, what rate of interest they would pay for the loan if they carried it,—called it at the various periods. If they called it on September 1, 1920, the cost of \$819,000.00 for the six months would be \$123,480.00 or at a rate of more than 30% per annum. If it were called at the next period, March 1st, 1921, the cost would be \$187,110.00, or more than 15% per annum. If it were called at March 1st, 1922,—I would like to correct that, it is more than 19%.

Q. You mean if they called them on March 1st, 1921?

A. 1921, the cost would be more than 19%. If it were
1281 called on September 1, 1921, it would pay more than 13%; if it were called on March 1, 1922, it would pay more than 13%, and if called on September 1, 1922, the last date, it is callable, under their contract, it would exceed 12%.

Q. Is that all you wish to say about that, Mr. Gates?

A. Yes.

Q. Taking all of the investigation which you have made with reference to loans and mortgages, and bonds, and stocks, and industrial concerns, in the City of Houston what in your opinion is a fair rate of return for money invested in a telephone plant such as the Southwestern Company has in the City of Houston?

A. I think it ought to run at least ten per cent.

Q. You think ten per cent per annum would be the minimum?

A. I think that would be the minimum.

Q. Even on that basis do you figure the stock could be sold in the City of Houston?

A. I think you could sell very little of it in the City of Houston—you would have to go outside.

Q. One of the elements that you take into account in fixing the rate as high as you do, would be the risk which an investor takes in putting money into telephone stock, is it?

A. Yes, sir.

1282 Mr. D. A. Frank: That's all.

Cross-examination.

Questions by Mr. Howard:

Q. Mr. Gates, do you know anything about the value of the property of the Houston Gas Company?

A. Only in a general way.

Q. You just judge by its stock issue?

A. No, I haven't judged by its stock issue. I have talked with the Houston Gas Company officials, and have also considered the size of the plant.

Q. Would you be sure that they have got a million and a quarter invested in this city?

A. I think they have probably got considerably more than that, Mr. Howard.

Q. You wouldn't be positive that they had more than that?

A. No, I couldn't be positive without I investigated it. I might say that I could be positive that they had more than that; my guess would be that they had more than twice as much invested.

Q. Do you know that of all the public utility concerns in the City of Houston that the Gas Company is considered the most inefficient?

A. No, I don't know that.

Q. Don't you know that it is a public and notorious fact
1283 that they have consistently admitted their inability to perform service in this city?

A. No, I don't know that.

Q. That is, anything like adequate service?

A. I don't know.

Q. Don't you know it to be a fact that the slightest little drain upon their capacity causes them to appeal to the public not to use their service?

A. I don't know that to be a fact. It wouldn't surprise me a bit if they were having difficulty to get money to extend the plant,—this would indicate that they could not supply the people of Houston.

Q. Do you know that in the last year they were before the City Council with the same plea that you came before it with claiming that they were losing money every day they ran and that they were only granted an increase of nine per cent, and that they accepted it as satisfactory?

A. I don't know; that wouldn't surprise me if they were before the Council asking for increase just as we have been for the past two years.

Q. And do you know that it is a matter of public record over in the City Hall that they got an increase of nine cents,—that where
1284 the year before they had \$1.00 per thousand, and that they accepted an increase of nine per cent, instead of 50% or 100% as you are asking for?

A. We are not asking for 50%, nothing of the kind. We ask the City Council for an increase of approximately 26%. I presented

the matter to the Council myself, Mr. Howard, and I think you were there and heard it.

Q. You presented a rate of \$7.50 on business phones as distinguished from \$5.00 and \$3.00 on residence service as distinguished from \$2.00?

A. We put that under the measured rate and gave you an estimate of what we thought the increase would amount to. When we went in and asked for that rate, and when we went in and got the statement as to the amount we expected that rate to earn, we might have made a mistake as to how much it would have earned; it might have earned more and might have earned less.

Q. And I believe it is in the records that you never applied for any increase in rate until late in 1917, at any time in the history of the company?

A. I don't know whether it is in the record or not; I won't say that it is not, but to the best of my recollection is that the first increase we asked for in recent years was on the 26th of December, 1917.

Q. Do you know why we never heard of any request for an increase in rate prior to the year 1917?

1285 A. I don't remember now of the application here. I was not personally present. But we have pursued this application for more than two years, and have attempted to show that we were losing money every day that we were deprived of the increase, and I also know that prices and costs have gone up every month and that we have lost more money, and are losing more money every day than we did when we asked for the increase.

Q. Do you know that the Gas Company has consistently admitted that their plant is not designed to take care of the needs of a city of this size?

A. I don't know that they admit it. I would consider that probably the City has outgrown the plant, and they are now seeking some money to extend it.

Q. Don't you know that it is not *it is not* susceptible of being built upon, and that its mains are not capable of being built upon in such a way as to economical- administer and perform the service required in this City?

A. No, I don't know that any such state of affairs exists.

Q. Your idea is that the people of this community should permit the payment of the 11% *per cent* interest per year and that a rate be based on them, and they should be included in the cost of this service, is that your idea of what the people should permit, Mr. Gates?

1286 A. My idea, Mr. Howard, is simply this, that the people are going to pay, and ought to be willing to pay what it costs to perform the service, and the cost of money is just as real a cost as the cost of the day laborer, and if it costs 11¼% the people will have to pay for it.

Q. Mr. Gates, why should the people pay 11, 12 and 14% interest because the people who are holding themselves out here as able to perform a certain service have to pay it any more than if I were

to undertake to build a house for you for a certain price and didn't have any money and would have to go down to a pawn shop and get money at 20% and 25% per annum, that you should carry that expense as a legitimate expense in the construction of your house?

A. I would not expect you to go and borrow money to build a house for me unless I paid you for it, because if I didn't you would go broke.

Q. You would consider that a man who undertakes to build a house, that in addition to what the material costs that goes into it is reasonably worth, and what labor is in it is reasonably worth, and a fair profit upon the undertaking, that there should be added to that items of exorbitant interest that I had to pay on account of my inability to finance the undertaking?

1287 A. I should think that I would expect to pay all of the expense of building that house plus a profit to you. Now, if I didn't contract with a man who was financially able to do it, or rather, who was financially unable to do it—

Q. (Interrupting.) And you think that—

A. (Interrupting.) Let me finish my answer.

Q. And therefore you think you should be permitted to borrow money at exorbitant rates and make the people pay for it?

A. Let me finish my answer, Mr. Howard. The cost of money, as I have said before, is just as real and just as much a cost of doing business as anything else. If I employ you as a lawyer and I asked and expected you to perform services for me for less than your office rent cost you, I would expect to pay part of your office rent together with your other accounts, that is, I would pay a part of all of your expenses. I would not expect you to perform services for me without paying you. Now, a business like a Gas Company, like a telephone company, or like a street car company, in the City of Houston, is too big for one individual to undertake; there is no individual who, if he had the money, would take the risk on it,—he is going out and is going to get some of his associates and some of his

1288 friends to come into it, and when he gets those men together the question comes up as to what the return is going to be,—what can our money earn if we invest in this telephone company, gas company or in this street car company; the question is going to arise right there, how continuous are the earnings to be, how safe is our return, and if you can assure your friends of the safety of the investment, and that they can make more money, or as much money as they can in some other line of business, why, probably, they will go in with you, but you are going to have to assure these people that they will receive a return of just what other people will pay for it, considering the risk. The exhibit which I have put in here showing what National Banks earn indicates that you can invest your money in a national bank, that is, the money invested in national banks in the State of Texas paid practically 15% dividends for the year ending June 30, 1918.

Mr. Powell: Have you got the stock at par?

A. Yes. Now, if you take the money actually invested which is

the capital and surplus, that represents your book value, and you get a return of 13.02 per cent.

Mr. Powell: The point I want to make is every rural bank making that dividend. You can't buy stock at the book value,—the market value is always above the book value?

Mr. D. A. Frank: No, the book value; that is just exactly what determines the book value.

Q. You admit going concern value, Mr. Powell, do you?

Mr. Powell: You have to buy stock at the book value to make that much money on it?

A. Well, all right. You are going up here in banking—in business circles, it is usually considered that a bank,—a national bank, is under the supervision of the Comptroller of the Currency of the Federal Government, and that is about as safe an investment as you can get, and there have been no failures during the last year, as I understand it, of national banks.

(By Mr. Howard:)

Q. There hasn't been any failures in any business——

A. (Interrupting.) Whenever we get an association of capital together, which is necessary to handle any business we are going to have to pay what that capital will earn in other lines of business.

Q. But you picked out an old antequated, delapidated, public utility and state that as an example of the interest you have to pay, and yet you come in here saying that the American Tel. & Tel. Company, the owners of this property can get this money at 6%, and for that reason you should have an increased return so as to take care of the troubles of some poor and inefficient utility.

A. I am not saying that at all; I haven't said that the American Tel. & Tel. Company owns this plant; the Southwestern Company owns it. Furthermore, I haven't said anything about the rate of return, which may be 6%. I think it is in evidence,—let me correct it,—the rate of interest we may pay is 6%, but we feel entitled to earn a return on the present value of this property which is something in keeping with what other properties earn here, and could earn, and to extend this property to keep up with the growth of this City,—to protect capital and to extend the property to keep up with the growth of the City. Now, I don't know what plant you had reference when you spoke of an old delapidated plant, but——

Q. (Interrupting.) I was speaking of the Gas Company here and that is a notorious fact?

A. I was going to say that if you referred to our property that our property is practically all new here.

Q. The testimony shows that the physical condition of your property is good; I was thinking about the gas company?

1291 A. Notwithstanding the fact that the gas company property is old, the statements of the gas company indicates that earnings of more than three times enough money to pay the interest on the bond issue are made.

Q. The fact is, Mr. Gates, that within the last year they claim to be losing money just as you are claiming here and they got an increase of 9% and they have apparently gone away happy and blessing the City Council for their magnanimous support. Mr. Gates, why are you concerned with the rate of return, why would it make any difference whether you are allowed six, or eight, or three or ten per cent, when it appears that with all the traffic will bear, you make less than one?

A. Well, we are entitled to this return and we hope the traffic will bear enough to get us the return. We are concerned with it because we have got some time to get a return on this property.

Q. It has been suggested right here that it is about all the traffic will stand, and that it will pay you less than one per cent. What's wrong with the utility, what's wrong with the enterprise, why should that condition exist?

A. It's not the enterprise, Mr. Howard, except possibly this, that we didn't raise the rate quick enough,—the public perhaps 1292 didn't realize the value of the telephone.

Q. But you are basing it right upon the same rate that the public here are already using. I believe that it is admitted here that it is a fact that the people are patronizing the telephone more in proportion than any other community in the state.

A. No, not more in proportion by any means; it patronizes it but the telephone service is furnished entirely too cheap, not this year or last year, but for several years.

Q. Mr. Gates, you made up a little statement on the first page of this exhibit and you show some very handsome profits over here in this right hand column. How did you make this up, Mr. Gates, did you have access to all of the records?

A. I simply copied it from the Report of the Census of Manufactures published by the Bureau of Census of the United States Government, and you can find that report in the Public Library here, in the report for 1915, Vol. 1, pages 1492-3, and you will find all figures shown on this report, and you will find the expenses in considerable more detail, but will not give, I don't think, as I remember it now, the per cent that the net is to the total,—to the 1293 capital, but the net figure is given there, and the only thing that statement I made up that isn't in that report is simply that I figured the percentage that the net bears to the total.

Q. Passing right down that right hand column you wouldn't consider it un-professional if I denominated those concerns as profiteers?

A. That was before anybody knew anything about profiteers.

Q. Well, it was profiteering at that time, 103% is profiteering. You wouldn't put that forward as having any relation to what should be a proper telephone return?

A. Yes, sir, I think that is the best evidence of what the return should be.

Q. You are not trying to break into that class and don't want to get 150%?

A. Oh, we don't expect or hope to get any 150%; the average of

these things is over 15%. Now that is merely put in here as an indication of what other people are making.

Q. You didn't set up Hundreds of Thousands of people who went broke prior to 1914?

A. My understanding is this takes in all manufacturing industries that existed in Houston in the year 1915.

Q. I wonder if there is any such report for the year 1919?

1294 A. Why, the census bureau is four years behind in their publication, three or four years, and probably about 1923 or 1924 you can get hold of this information.

Mr. Howard: That's all, Mr. Gates.

Redirect examination.

Questions by Mr. D. A. Frank:

Q. One reason that the telephone company didn't make application for a change in rate prior to the time that they did make the application was the fact that they had a franchise taken out in 1915 which provided that they would not raise their rates for a certain period of time?

Q. Yes, and they agreed in the franchise not to raise the rate for a certain length of time, I think, two years.

Mr. Howard: Did they do that in Houston?

A. I don't remember the details of the Franchise.

Mr. Howard: Wasn't the franchise that they wouldn't raise the rate without putting on a hearing?

A. Yes, the franchise, I think, is in the records.

(By Mr. D. A. Frank:)

Q. The Gas Company may be an old delapidated company, 1295 but this statement shows that their gross earnings for the year ending January 31, 1920, was \$794,743.98, is that correct?

A. Yes, sir.

Q. Whether or not the telephone company breaks into the class of industries listed on page 1 of your statement, it has to compete with those industries when it tries to get money?

A. Yes, sir.

Q. Mr. Gates, a statement was made here a day or two ago that the telephone company would have to spend \$500,000 for construction and re-construction in the coming year?

A. I didn't make the statement; I think they will have to spend more than that.

Q. So, the telephone company is getting in new money all the time?

A. It must have new money to go on.

Q. Mr. Howard told us that the Gas Company is in bad condition because it had been laid out for a very much smaller city than Houston?

A. Yes, sir.

Q. If the Gas Company didn't have fundamental plans laid out for it like a telephone company they might make a mistake of that kind, is that true?

A. Yes, sir, even with fundamental plans they might make 1296 a mistake.

Q. And even a telephone company might make a mistake if they didn't have some very good work along that line?

A. Yes, sir.

Mr. Duls: The fundamental plans are made out by the general staff of the American Company?

A. Yes, sir.

1297 *Testimony in Support of Assignment of Error No. 6, Relating to Relations with Western Electric Company.*

EDWARD V. COX, a witness for the plaintiff, after being duly sworn, testified as follows:

Direct examination.

Questions by Mr. Duls:

My name is Edward V. Cox, and I live in Plainview, New Jersey. I am employed by the American Telephone & Telegraph Company at 195 Broadway, New York City. I have been connected with the American Telephone & Telegraph Company since 1895, a period of twenty-five years, approximately.

When I first entered the business I went into the side of the work having to do with the installation and maintenance of plant, switchboards, subscribers' stations, and so on. I was engaged in that for some four years; I then went into the General Department and had 1298 to do with the general problems involving that same line of work. That was not in the engineering department. Of course, the organization of the Company then was slightly different from what it is now. This General Department had to do with the planning for construction work, and so on. I had about two years' experience in that.

Before I went into the telephone business I was graduated in the Mechanical Engineer course at Sheffield Scientific School at Yale University; that's the Scientific Department of the University. I received a degree from another institution of learning; I went from there to Columbia University in New York City, and have the degree of Electrical Engineer from that institution.

With reference to my telephone experience, going back to where I left off, with the General Department, I became an inspector of telephone construction, maintenance and operating in the Southern States. I had nearly a year of that. From that I went into the Engineering Department and had charge of repair shops and had charge of the design and construction,—engineered the sub-ways—the first long toll sub-ways that were built by the American Tele-

phone & Telegraph Company. The underground conduits, these being the first toll sub-ways ever built; they were built from New

York to New Haven, Boston to Providence, New York to
1299 Philadelphia, and Chicago to Milwaukee. I supervised as

Supervising Engineer the building of these sub-ways. From

there I took up the line of work now identified under the organiza-

tion as Plant Department work, and was assistant to the General

Superintendent of Plant of the Long Lines Department of the

American Telephone & Telegraph Company. I was located in

New York, and in connection with that work had to familiarize

myself with accounting, because of the fact that in the accounting

system, which we heard of yesterday, was developed and established

throughout the Company at that time. My engineering experience

directly fitted me for that accounting work, because, the new ac-

counting methods aimed to give a true picture of the Company's

accounts, whereas, before that they had been largely theoretical ac-

counting presentations. The new scheme was to make the account-

ing a picture of the accounts of the Company useful to the men in

all departments of the Company. That was about 1908,—'07 and

'08. I had that experience for about three years and was then

assigned to the Accounting Department, becoming the Chief Ac-

countant in the year 1911, at headquarters of the General Depart-

ment in New York. Right at that time the Interstate Commerce

Commission was considering the development of its standard,—its

uniform system of accounts for telephone companies, so that I par-

ticipated in the conferences with the Interstate Commerce
1300 Commission's representatives in the matter. I was part of

the General Staff of the American Telephone & Telegraph

Company from and after the time I became identified with the Ac-

counting Department. In participating in these conferences with

the Interstate Commerce Commission, I did that on behalf of the

Associated Companies, as well as the American Telephone & Tele-

graph Company. The Associated Companies occasionally had a

representative, or representatives, at those conferences, but only

when requested by me for some special purpose. That was work

that I was doing under this 4½ per cent payment that the Associated

Companies make to the American Company for that service. I was

asked by the Commission to accompany their representatives on trips

made to establish these different classifications, and visited a number

of telephone companies not connected with the Bell Telephone Com-

pany. I did not at all force myself on the Commission; I was

asked by them to do so, which I gladly did. Having received the

Interstate Commerce Commission's uniform system of accounts,

my duties then lay in having them applied throughout the telephone

system,—of the Bell Telephone System, and that involved an ex-

pansion of their accounting. I was Chief Accountant at that time;

also, in developing the methods by which these accounting results

were reached I continued in that work until 1917, and in that year

I was appointed General Auditor for the American Telephone
1301 & Telegraph Company, the General Department having to

do with the corporate side of the work rather than the operat-

ing side. I held that position for about a year and a half and then became Supply Contract Auditor, my present title, on July 1, last year. I now hold the position as Supply Contract Auditor of the American Telephone & Telegraph Company, and when I say "Supply Contracts" I am referring principally to the supply contracts with the Western Electric Company between the American Telephone & Telegraph Company and the American Bell Telephone Company, as licensee of the Western Electric Company to manufacture under patents which those two companies own and control; also in connection with the so-called General Supply Contracts which the Associated Companies have with the Western Electric Company. As a general proposition all the Associated Companies have entered into this arrangement. I have a form of that contract with me here.

Mr. Duls: We offer this in evidence as Plaintiff's Exhibit No. 141.

(The contract was thereupon received in evidence, marked Plaintiff's Exhibit No. 141, witness Cox, and is filed herewith.)

1302 The contract is modified by letters written between the Company and corrected from time to time. I have here copies of the supplementary letters written between the Southwestern Company and the Western Electric Company.

Mr. Duls: We offer that as Plaintiff's Exhibit No. 142.

(The letters were thereupon received in evidence, and marked Plaintiff's Exhibit No. 142, witness Cox, and are filed herewith.)

The Western Electric Company is engaged in a manufacturing and merchandising business, specializing on telephone and electrical supplies of all kinds.

The Western Electric Company in relation to the Bell System has several distinct functions. First of all, it is the manufacturing agent under the patents of the American Tel. & Tel. Company for the instruments that are used, the transmitters, receivers and induction coils, and then it is further the manufacturing organ for the telephonic supplies that go with the transmitter and the receiver in order to make a telephone system, the switchboards and all the details of apparatus that are involved. Those are also manufactured under licenses from the American Bell Telephone Company, 1303 or the American Telephone & Telegraph Company and are sold to the associated companies. In addition to that, it is the manufacturing agent of other sorts of electrical supplies, which it controls for itself, and finally it is a purchasing agent for telephone supplies of all kinds manufactured by others than the Western Electric Company. Under the last function mentioned of the Western Electric Company it acts in the capacity of a jobber for the Bell System, but it is for the telephone Company and not for the manufacturer.

The functions and relations of the Western Electric Company to the Bell System, to the associated companies, of which this Southwestern Company is one, are primarily two functions, first, it acts

as a manufacturer for the associated companies, and second, it acts as the jobber or supply agent of the associated companies. Those in the main are the two functions.

I only know in a very general way when the Western Electric Company was organized. I know that either the Western Electric Company or the predecessor organization was in existence in the earliest stages of the telephone industry and at that time it was in the general business of manufacturing telephone supplies and 1304 the excellence of its product was such that it led the American Bell Telephone Company to designate it as the licensee to manufacture under the patents held by the American Bell Telephone Company.

With reference to the advantages to the associated companies growing out of that manufacturing relationship with the Western Electric Company, the fundamental thing lying behind this Western Electric arrangement is the fact that the Bell System stands for a universal service. Its apparatus is not to be used just locally, but the apparatus here in Houston is to be able to function properly with apparatus in San Francisco. The very best that can possibly be secured in the way of apparatus must be developed and must be made. Now, that is the reason why the Western Electric Company was first designated as licensee in making telephone appliances and why the relationship has been expanded since then, the absolute assurance that the plans and designs of the General Engineering Department of the American Telephone & Telegraph Company will be carried out in the manufacture of apparatus.

Q. Do you mean, Mr. Cox, that there has been all during this relationship an effort to standardize the apparatus which the Bell System uses throughout the country?

1305 A. Exactly that. There has been the effort, first of all, to develop the most efficient apparatus obtainable, and second to make that available to every company in the system by means of standardization and through that the ability to manufacture at the very lowest cost, to have the supplies ready when, where and as needed and to get the benefit of experience with those items of apparatus in all parts of the country, so that any defect that could be detected or any improvement that could be suggested would be brought up and made available to every single user of the telephone.

Q. Does the Western Electric Company keep in touch with the use of this apparatus in the different parts of the country so that it can gain by the experience which the telephone companies receive?

A. That contact is exceedingly close. They are constantly in touch with the general staff of the American Telephone & Telegraph Company, the engineering department in particular I am referring to now, and cooperate with them in every form of improvement that can be worked out. It is very illuminating to go into the rooms of the Western Electric Company, their factory, and to see the methods by which this excellence of apparatus is secured. Suppose I just take as an example the bell, the bell underneath that

box. Now, that has got to operate in winter, in summer, in dry climates, in wet climates, and all of those conditions may
1306 be present in any one locality at different times of the year.

Now, they don't just simply manufacture a bell box that will work here under the conditions of this room or the conditions of the factory, but they will take it and they will test it under all kinds of conditions. I have seen them testing those bell boxes and all sorts of other apparatus, and there will be a sample instrument that is being tested under conditions of very great humidity. There is a tank with water boiling in it,—not boiling,—kindly let me correct that, at a temperature a little above a hundred, to make it very humid atmosphere. There will be another case where it is being subjected to a freezing condition by freezing; the temperature is very low, way belowing freezing. There will be conditions of great dryness where all the moisture is taken from the air so as to let the parts contract, if they are subject to any shrinkage. Now, in each case the items of apparatus that is installed there is being run through a break-down test, through an electrical device which records the number of times an apparatus is used and when a break-down occurs it stops and there is the record on the dial to show you exactly how many times that is operated. Now, that is simply typical. Every single item is done that way, subjected to a break-down test.

Q. You are referring to the items used in the local exchange here in Houston?

1307 A. All of those different apparatus have gone through that kind of a rigid test to demonstrate any weakness under any conceivable conditions under which they may be placed.

Q. These experiments are carried on by the Western Electric Company and the general staff of the American Company also is carrying on experiments, is that true?

A. The general staff is carrying on experiments more with regard to the improvements in the general plan and scope, leaving the detailed manufacturing requirements, the dies or the jigs or whatever is needed in turning out the detail apparatus to be developed by the Western Electric Company.

Q. Well, they are constantly exchanging ideas as to this apparatus?

A. Absolutely, because either may develop an idea that is immediately useful to the other.

Q. Now, in this manufacturing, what can you say about the use of old apparatus by the associated companies?

A. There is a very important function that is involved there with the growth of the telephone industry. A switchboard may be outgrown before the apparatus is worn out. Now, one of two things must happen: You must either put in an additional section, we'll say, of that same switch-board, or you must remove that switch-board and put in an entirely new one of adequate capacity
1308 for the present conditions. Under that latter condition, which is very frequent, you have to return to the store room a lot of used supplies. Just as soon as you take them out of their

original installation, they are subject to deterioration, in addition to what they have experienced through wear and tear in actual service. You have also in addition on these second-hand items the ones that have been taken out because they were defective, some troubles occur and they have to replace them. The result is that over time there is developed a large stock by each of the telephone companies of these items that are potentially of great value but not in position to be used and the local company hasn't got any place to put them at the time. I recall very distinctly the situation developed in the old days. When I say "the old days," I mean before the Western Electric Company had devised the plan with the cooperation of our engineering department to care for the second-hand apparatus. Now, this goes back to the time when I was in charge of the repair shops for the American Telephone & Telegraph Co. We had their apparatus coming back and we would repair it as needed. A great deal came back that we didn't need and that was stored and we couldn't bring our minds to destroy or junk these items which were obviously valuable telephone equipment and yet we couldn't have any place to put that and we couldn't sell it for love or money, other than junk.

1309 Q. If this Southwestern Telephone Company's Exchange here in Houston was operated independently by itself, it would have—if the switch-board outgrew that situation, it would have to junk that portion?

A. It would have to junk it or it would have to store it just as we had to store the items that were turned into me for repairs.

Q. By virtue of this relationship with the Western Electric Company, it can obtain a use for that equipment which they otherwise would be unable to obtain?

A. These items are returned to the Western Electric Company. There they are completely reestablished, so that they are to all intents and purposes as good as new. They are then turned back to the telephone companies at a price which represents—well, we'll say, only a small fraction of their initial cost,—the cost of the depreciated article plus the repairs.

Q. Now, these benefits grow out of the manufacturing relation of the Western Electric Company to the associated companies?

A. They do, because it is through the control of the manufacturing design and the manufacturing process that it is possible to work out these items which run into very big values. This is a matter of millions that I am referring to now.

Q. Now, you testified that the Western Electric Company
1310 also acted as a jobber for the associated companies. Does it act as such for the Southwestern Telegraph & Telephone Co.?

A. It does.

Q. Has the Western Electric Company a store house or warehouse here in Houston?

A. Yes, it has.

Q. I wish you would tell us briefly what advantages or benefits accrue to the Southwestern Company by virtue of this relationship

under which the Western Electric Company acts as a jobber for the Southwestern Company.

A. The first thing that happens in this jobbing arrangement is this: It permits a concentration of buying power, the requirements of all the associated companies being polled and under the arrangements of the general staff of the American Telephone Company, these required being alike, so that a pooling process is possible. You have built up an enormous purchasing power. The result is that instead of having to work through the jobbers as a local telephone company would very largely have to do, I mean a company just buying for itself, they are enabled to go directly to the source of that article, the manufacturer, and deal with him on the basis of his most preferred customer. Now, that doesn't mean just merely benefit in price. That is very substantial. It means a benefit in the 1311 service as a whole. Now, I just happened to notice here in the files some sample forms. Now, I have taken the simplest case I could of the Western Electric jobbing proposition.

Q. Are they used here in Houston?

A. These are forms that I pulled right out of the stock room there, and these are made on papers which have been established as standard. Now, just to take a minute to explain that process. If the papers, if the forms had not been ordered through the Western Electric Company, these would have been ordered of a local buyer, a local jobber. This particular paper is marked "Telco Favor Bond." That is a water mark of the American Telephone & Telegraph Company. If this were bought, as it would have to be under the conditions of the company, that would be, not the mill mark, mind you, but the jobber's mark. Now, that is an important distinction. The jobber's mark would mean that he would have one mill make it one time and another mill make it another time. So that if for any particular purpose this form was designed with the conditions that I represented, the output of one mill, there is no assurance that it would remain the same form at a different period. It might be a different paper. I was personally involved in this matter of selecting this paper, which came under my supervision as Chief 1312 Accountant, because the clerical force has so much to do with papers that the use value of that make them the force to decide through experts as to what papers should be used. Now, they are not the same, these papers, the first one is "Telco Favor," the next one is "Hammermill Bond," the next one is "Telco Wagon," the "Telco" is evidence of the Bell Company water mark; "Telco Junior Bond," "XX Bond." Now, all those papers represent a range of qualities. Now, what company would be able for itself to employ experts to determine what the qualities of this paper were and why it should be used, what the abilities were to produce a paper that will stand erasure, at the lowest possible price. There are different qualities in paper, different kinds of substances, rags, jute, wood pulp, and so on, linen. Now, all of those items contribute characteristics to the paper. Now, what telephone company ever could afford to go into any extensive investigation and decide what kind of paper it wanted?

Q. Now, do you mean, Mr. Cox, to refer to that as a sample of the Western Electric Company's ability to purchase material?

A. If you will get to that point. It isn't there yet. Now, the selection of the paper. In other words, these papers and others were established by the general staff as standard. Now, bringing
1313 this right home to the particular problem now in front of us, the Western Electric Company's feature in this. The matter was referred to the Western Electric Company to make contracts for these papers.

Q. In other words, the Western Electric Company acted as the Purchasing Agent?

A. Acting as purchasing agent for the telephone companies. Now, to provide a source of supply where these particular papers could be obtained: The paper industry is peculiar. There is practically no direct marketing by a paper mill of its own product. There are a few very pronounced exceptions to that general rule. You can count them on your finger, but the paper business is through jobbers, and all the papers bought by the Bell System prior to this period were bought through jobbers. Now, just the second we had a mill in sight, knowing the quality of paper we wanted, we could go right to the mill, and we broke right straight through that jobber's ring and we cut out from 10 to 40 per cent of that first cost. Now, the forms on the cost of the paper is at least 50% of the cost. Now, that comes right straight home to the papers that are used here in Houston.

Q. Now, Mr. Cox, you say the Southwestern Telegraph & Telephone Company uses those papers here in Houston?

A. They use them here in Houston.

Q. Now, did I understand you to testify that the South-
1314 western Telegraph & Telephone Company was saved from 10 to 40 per cent on the cost of that paper?

A. That is actually the fact.

Q. That was by virtue of the Western Electric Company acting as Purchasing Agent for the Southwestern Company?

A. That's a fact. In order to make this particular case complete, I would like to add one further point. How were these papers introduced into the Southwestern Telegraph & Telephone Company? That was again done by the General Staff because they assigned a paper expert to come out here and make a study of the forms of the Southwestern Telegraph & Telephone Company so that they would know the requirements for any form. Now, it is obvious that you should not have a temporary form on paper which is of such high quality that it will last indefinitely, and vice versa, if your record is to be permanent, it should be on paper that is permanent. That study was made by the General Staff of the American Company without expense to the Southwestern Bell Telephone Company, and through it there is an annual saving established of over \$5,000.00.

Q. On what basis, an annual basis?

A. An annual basis, yes. Now, I have taken, as I said, the simplest case that anybody can understand, to show the point. It

is not the size. It is the simplicity of the case that makes me show it.

1315 Q. Now, do you mean that a centralized purchasing and distributing department, such as is operated by the Western Electric Company could be carried on cheaper than it could by the independent companies?

A. There is absolutely no question about that.

Q. I mean, that it could be carried on cheaper than the Southwestern Company could carry it on by itself?

A. Obviously, because there are experts assigned to the different lines. They can function rapidly; in fact, make relatively very few mistakes. They can coordinate their work. They are in touch with sources of supply. Their work is more rapid and very much better and you have the assurance that you will get the supplies when, where and as you need them.

Q. Is it your knowledge and experience that the Southwestern Company can purchase cheaper by virtue of this relationship than it can if it were purchasing in the market by itself?

A. I am absolutely convinced of it.

Q. Now, what other advantage accrues to the Southwestern Company by virtue of the jobbing relationship with the Western Electric Company? What do you say about taking care of emergency situations, such as the storm we had here in 1915, for example?

A. The Western Electric Company maintains branch storehouses in the strategic points of each company's territory. Those
1316 storehouses contain the various items of telephone equipment in sufficient volume to meet all normal conditions of emergency, but back of that there exists the larger centralized warehouse at Hawthorne.

(By Mr. D. A. Frank:)

Q. Where is Hawthorne?

A. Hawthorne being the manufacturing plant of the Western Electric Company at Chicago, where there is a much larger volume available which can be shipped to any point in the country where needed. On part of the items not manufactured by the Western Electric Company, at Hawthorne, the Western Electric Company through its purchasing power is enabled not only to make the lower prices that I mentioned before, but enabled to get the service, and that service under the particular point we are now discussing consists in a guaranty that the manufacturer will hold himself ready to supply a certain volume of output on demand; in other words, he maintains a stock there for emergency purposes.

Q. Well now, just apply that to the Houston Exchange, if you can, Mr. Cox, say that storm of 1915 that we had here?

A. I am not familiar with the exact conditions that took place then, but I can be certain from the functioning of the system under conditions which I have observed over and over again, that
1317 the action would be somewhat like this: The supplies available at Houston were, of course, on the job, ready. The sup-

plies available at the other centers in this immediate vicinity, other storehouses of the Western Electric Company at San Antonio, Dallas, New Orleans probably, and the others, were all immediately available and all shipped probably, the same day, certainly within 48 hours, the supplies that were needed to restore the conditions here to normal.

Q. If there weren't sufficient supplies at the places you have named, would supplies be shipped in from other points?

A. The supplies would be shipped in from the Central storehouse at Hawthorne or from the manufacturers.

Q. So that, by virtue of this relationship the Southwestern Telegraph & Telephone Company are able to take care of emergency situations?

A. Certainly. If it hadn't, it would have had to fall back on one of two things: Either Houston itself would have had to have had a very much larger supply of emergency materials, and nothing that could have been reasonably held in stock would have been adequate to these catastrophies that come from time to time, either it would have had to have had a large supply of surplus material constantly drawing interest and storage space or it would have in the emergency been subject to the conditions of rising costs be-

cause you cannot buy under those conditions as cheaply as
1318 you can under normal conditions and what it didn't have on hand, it would have had to buy against the market tendencies.

Q. Now, you say it would have had to buy against the market tendencies: Do you mean that in emergencies of that kind the prices for the material which the Southwestern Company would need would be increased or enhanced, is that so?

A. I mean that no manufacturing concern dealing with the small unit would give them the service demanded in emergencies of that kind without pay for it.

Q. Does the Western Electric Company make an extra charge for supplying materials in these emergency situations?

A. They do not.

Q. If then, it wasn't for the Western Electric Company with its warehouses in different parts of Texas and all over the country, the Southwestern Company would have to carry a great deal more of merchandise and telephone material than it now does?

A. In order to provide against the emergencies of all kinds, both the little fellows and the big ones.

Q. Well now, then, it avoids a certain amount of large carrying charges by virtue of this jobbing—

A. (Interrupting.) That is right.

Q. (continued). done for it by the Western Electric Company. Would you say that is another advantage accruing to the Southwestern?

1319 A. It is, and let me add just this word to it, that in the case of any local construction, suppose this building or a pole line under the conditions of a company at Houston taking care of itself, it would have to buy the poles and buy the other line material well in advance in order to be sure that it could start the work when

the time came to prosecute the work. Now, that period of purchase is cut down very substantially under this other arrangement, because the supplies are available. They are under contract always and they are ready when the need is and the only thing that is necessary to be observed is that there is sufficient time to transport the material and accumulate it on the spot at the time it is needed, but not in advance of the time it is needed.

Q. Now, I wish you would explain to us how the Western Electric Company knows the amount of material that is going to be required by the Southwestern Telegraph & Telephone Company, say here in Houston?

A. Commencing in the fall of each year, each unit in the Bell System and by a "unit", I bring it right down to a situation such as Houston, is studied to see the probable increase in the company's plant during the succeeding year. The Commercial Department initiates that study, they know the demand on them for service and in order to provide this service, they know that—they tell the Traffic Department that we anticipate such and such a growth in 1320 stations, such and such a growth in the tool business, and the Traffic Department, with the benefit of that knowledge, knows the additional switch-board facilities, the additional circuits that it will need and it makes the demand on the Plant Department to figure out the items of plant required, and the Plant Department does that, both in items and in the estimated cost of those items. Now, each project is set down there specifically and in order that the total of any company is obtained, these different units are brought together and summarized. Now, the results for any company are finally brought together for a general review by not only the general staff of the American Telephone Company in New York, but also by the Presidents of the various companies that meet there in conference in the Fall, to decide on this construction program. Now, having considered the summation of the whole industry, companies by companies, and reached the figures, then the final program is laid down in harmony with all the conditions and immediately that is determined, the Western Electric Company is advised as to the total quantity of supplies needed. Now, all that is done before the end of the year so that we'll say, in December the Western Electric Company knows that during the succeeding year it 1321 will need to make,—well, we'll say 800,000 desk stands, it will need to purchase so many hundreds of thousands of poles and cross-arms and all the other items and it immediately arranges for itself the manufacturing program to develop that and it makes the underlying contracts so that the manufacturing plant will get its raw material, and it makes the contracts with the other manufacturing concerns from whom it purchases. Now, it must be obvious merely from reciting that sequence of events that all of that tends to produce a less cost, because for the Western Electric Company itself as a manufacturer the output can come along in a reasonable, harmonious, logical volume. You haven't got the very disturbing conditions of emergency, everything rushed to get through a certain line of work, and then the pressure switch to something else, but everything flows through the shops harmoniously, regu-

larly and efficiently. Now, exactly the same thing is true of the other manufacturers from whom the Western Electric Company buys in volume and it is by reason of the fact *that* their own costs are made in this way by having a stated volume, that the Western Electric Company is enabled to get the better costs and the better service and no local company can possibly get the same results.

Q. So that this relationship tends to and does actually result in lower costs both from the manufacturing standpoint and from the supply standpoint?

A. That's a fact.

Q. Under both functions then the relationship is advantageous to the Southwestern Company?

A. Decidedly so.

Q. Now, Mr. Cox, you say that you are at present the supply buyer?

A. The supply contract buyer.

Q. The supply contract buyer? What are your duties in that particular position?

A. They are to observe the workings of these supply contracts in every particular and to be certain that the associated companies are receiving the full benefits of these contracts, that the prices are the prices that should be billed, that the service is the best that can be given.

Q. Are you protecting the associated companies from any influence in prices charged them for their material by the Western Electric Company?

A. I am. One of the obligations in our general supply contract is that the prices charged for apparatus shall be uniform to all the Bell System companies. Correct the notes, please, uniform to all licensees of the American Bell Telephone Company. I really made a study just on that particular point.

1323 Q. Well, do you also look after the services that are rendered by the Western Electric in supplying the different materials that the Telephone Company uses? By that, I mean, do you see that the billing and routine is proper and that the delivery of material is efficient, do you attend to that?

A. I follow all of the phases of performance under the supply contract and those are included.

Q. In other words, if a requisition put in by the Southwestern Company isn't filled as speedily as it should be, you inquire into the cause of that?

A. I wouldn't bring it down to that detail, because a particular requisition could be delayed and never come to my attention, but I review the thing in its general aspects and suggest the proper remedies where conditions require such action.

Q. Well now, have you made a study of the prices which the Western Electric Company charges the licensee companies and the prices which it charges the independent companies on telephone material, telephone apparatus? Or, have you an exhibit showing the result of that study?

A. Yes.

Mr. Duls: We offer that as Plaintiff's Exhibit No. 143.

(The document was thereupon received in evidence, 1324 marked "Plaintiff's Exhibit No. 143, Witness Cox," and is forwarded herewith.)

Q. Now, go ahead and tell us briefly what this exhibit is intended to show.

A. May I look at that copy?

Q. Sure.

A. The exhibit is intended primarily to show the conditions which existed in 1914 between the prices to the associated companies and those to the independent companies, and the conditions in the year 1919.

Q. Well now, let's see if I understand that, Mr. Cox. You are showing by this exhibit what the Western Electric Company charged the associated companies for material in 1914, and what it charged the independent companies for that same material in that same year?

A. Right.

Q. And then you are showing what the Western Electric Company charged the associated companies for that material in 1919 and what it charged the independent companies for that same material in 1919?

A. That's it exactly.

Q. Now, go ahead and explain just how you made this study. How did you select the material in the first place?

A. The engineers were asked by me to set up a rendition of the items which would cover all phases of the Telephone plant, 1325 would be truly representative. Those items without any further selection whatsoever were then priced for the year 1914, so as to show the prices to the associated companies and the lowest price to the independent companies. In every case the lowest price has been taken to the independent companies and I should parenthetically state that the price to the independent companies varies with the volume, the lowest price is the price that is used here.

Q. Let me understand that. Do you mean to say that the price to the associated companies does not vary by reason of the volume purchased by the associated companies?

A. That is correct. The price for a unit of one is exactly the same as a unit of a million. There is no distinction.

Q. Whereas, if the independent companies purchased in different quantities, the price would vary?

A. According to the ordinary rule of wholesale dealers.

Q. The difference between retail and wholesale sales?

A. Exactly. It is the wholesale price that is used here.

Q. All right, go ahead.

A. The first thing that is brought out is that the—we'll take the lower half of this page in the year 1914, the cost to the associated companies of these items.

Q. Will you state on what page?

A. This would be, let's see, on Exhibit D; would have been

1326 \$5,275,443.00. The lowest cost to the independent companies would have been \$6,362,535.00, which is an increase of \$1,087,091.00, to the independent companies, or 21% increase to the independent companies over the price to the associated companies. That was the condition in 1914.

Q. Does that mean that the cost of that apparatus to the independent companies was 21% more than the cost to the associated companies in that year?

A. That is exactly what it means.

Q. Well now, for the year 1919, what was the per cent increase in cost to the independent companies over the cost to the associated companies?

A. It was 38% for that year.

Q. Now, do you show the details of that anywhere in that exhibit?

A. The details are given under Exhibit E for 1919.

Q. Exhibit E being one of the pages of Exhibit No. 143?

A. That is right.

Q. Now, I notice that you have on the right hand side of the first page, per cent increase, and under that you have 52 and 82. I wish you would explain that percentage.

A. During the period of the war there was a considerable increase in prices in commodities of all kinds and the schedule was to show, what has actually taken place in items of telephone supply. The facts brought out are, as follows: that on telephone apparatus 1327 the price- to the associated company have been increased by the Western Electric Company 52%. The prices on the same items to independent companies have been increased 82%.

Q. Well, that, Mr. Cox, has been by reason of the increasing cost of manufacturing, the cost of the raw products, this increase in price?

A. That is the reason for it.

Q. And you say that the increase in price to the associated companies has been 52% and to the independent companies 82%, that making an increase of 30% more to the independent companies than to the associated companies?

A. That is correct. Now, during that same period the price charged by outside manufacturers supplying telephone material increased 121%.

Q. Well, but that is on material that the Western Electric Company sells other than telephonic apparatus?

A. Yes, it shows that the Western Electric Company hasn't increased its prices in anything like the proportion that the prices of other manufacturers have been increased.

Q. Now, does your exhibit show that the Western Electric Co. has been charging the associated companies more than it has been charging the independent companies for telephone material?

A. It shows exactly the contract and the percentages here 1328 are as stated, 21%, in favor of the associated companies, in 1914, and 38% in favor of the associated companies in 1919.

Q. Now, summarizing this exhibit, what does it show briefly?

A. It shows that the Western Electric Company has at all points

favoured the associated companies over its other customers. Also it shows that these other organizations have in spite of this differential against them *have* been purchasing a substantial amount of supplies. This is on the second page, because in the year 1914, the companies other than the associated companies purchased \$2,300,000, worth, and in the year 1918, they purchased over \$3,300,000, worth. In other words, in spite of this price differential against them, they increased their purchases by about 43%, showing that the apparatus was well worth the price.

Q. Mr. Cox, the prices that you have in this exhibit were charged against the bills that were paid for these various materials on this exhibit?

A. That is correct.

Q. So that if subsequently the engineer wishes to check any of these figures, it can be done?

A. Very glad to have it done.

Q. Have you made a study of the prices which were charged any particular independent telephone company and the prices
1329 that were charged that same company as an associate company?

A. Yes.

Q. What company was that?

A. The Company is known as the Utica Home Telephone Co.

Q. Have you an exhibit which discloses the results of the study?

A. I have.

Mr. Duls: We offer that as Plaintiff's Exhibit No. 144.

(The document was thereupon received in evidence, marked "Plaintiff's Exhibit No. 144, Witness Cox," and is filed herewith.)

Q. What does this Exhibit No. 144 show?

A. This exhibit was obtained in this way: It is one of a series which will be made and happens to be simply the first one that has been completed. It represents a company which was established by the Stromberg-Carlson Telephone Manufacturing Company, which is one of the very important independent manufacturers, and continued as an independent company until the year 1911, when it was taken over by interests identified with the New York Telephone Company, a subsidiary of the American Telephone & Telegraph Co.

In connection with the taking over of that company, its
1330 records became the property of the New York Telephone Co. and the opportunity was thus presented of reviewing the items actually purchased by a company when it was not only independent but hostile to the Bell interests, and these records were in excellent, very excellent condition. So I was enabled to have prepared a set of data showing the items purchased from 1905 to 1912, inclusive.

Q. When was it taken over by the Bell interests?

A. 1911, but the impetus continued through 1912 and the figures here will show that situation. These items of apparatus taken from their actual purchases as evidenced by paid bills and the paid checks paying the bills, cancelled checks paying the bills were presented

to our engineering department, which then determined the nearest equivalent Western Electric item, in other words, the item to fulfill the same purpose, and as the result of that, two columns were set up, one to show the actual cost of those various articles, the other the cost of the equivalent Western Electric Article at the price to one of the licensee companies.

Q. Now, when that company was an independent company, from what manufacturing company did it make its purchases?

A. Very largely from the Stromberg-Carlson Co., with which it was identified.

Q. Is that a manufacturing concern in competition with the Western Electric Company?

1331 A. It is.

Q. Does it manufacture telephonic apparatus to a great extent?

A. It does.

Q. All right, go ahead.

A. Now, the results of the study show that for each of these eight years, the actual cost was higher than the cost for the equivalent Western Electric items and the average of the eight years was 18.69%.

Q. What do you mean, you mean that the—

A. That the actual cost for this entire period of eight years of these items—

Q. (Interposing.) During which it was an independent company?

A. During which it was an independent company, was 18.69% higher than the cost of the equivalent Western Electric item under the license contract. Now, I might just say in further explanation that the study revealed the fact that not every single item was less expensive under the Western Electric contract. I have here summary sheets and wherever a red figure appears, it means that the item was lower in cost from the independent manufacturer than for the equivalent item of the Western Electric manufacturer, but these items were not sufficient to affect the general result.

Q. Mr. Cox, in your studies is there any evidence of profiteering on the part of the Western Electric Company in its relations with the associated companies?

1332 A. There has been no such evidence at any time.

Q. Those studies that you have made there do not tend to show that the Western Electric Company is gouging the associated companies, does it, in any way?

A. They indicate the reverse in my opinion. I would like to add that on this Utica Home Telephone study, I have so far merely referred to telephonic apparatus. Another large item of telephone supplies consists of lead-covered cable and the lead-covered cable was analyzed separately. The conditions there showed the cable bought under the actual price of the cable as purchased from independent companies was on the average 8.08% higher than cable of the same relative equivalency under the Western Electric Company contract.

Q. How much?

A. 8.08% higher, as in the case of the telephonic apparatus, there were under the cable study cases where the cable was purchased at a lower price from the independent company than the equivalent cable could have been purchased from the Western Electric Company, but I want to say here that while these red figures indicate that fact of lower prices, it can be explained in this way: A number of these cables were not absolutely equivalent; for example, the independent company cable would have a sheath, a lead sheath protecting the conductors, having a thickness of 7/64ths of an inch instead of 8/64ths of an inch as required for Bell Company cables, obviously a little better cable for the Bell Company which Bell Company and Western Electric applies.

Q. Now, is there anything else that you want to tell us about?

A. Well, in the same way, this lead sheath contained no tin, whereas tin is about 3% of it, was at that time the standard for the Western Electric cable, and fulfilled a very important function in adding to the life of the telephone cable.

Q. Are the books of the Western Electric Company open to all the associated companies so that they can check the prices which are being charged by the Western Electric Company?

A. The books are open, but it is a very difficult thing for an associate company to check all of those prices, because the records are often at a point distant from the territory of the associate company. The result is that phases of that sort coming under the contract is a matter that falls to me to protect the associated companies.

Q. Have you made a study to find out whether or not the Western Electric Company is uniform in its charges to all the associated companies?

A. Yes, I have made such a study.

Q. Have you a copy of that study?

A. I have two copies here.

Mr. Duls: We offer this as Plaintiff's Exhibit No. 145, and ask that the stenographer mark it as such.

(The paper was thereupon received in evidence, marked, "Plaintiff's Exhibit No. 145, Witness Cox," and is filed herewith.)

Q. Now, Mr. Cox, this study was made with an idea of ascertaining whether or not the Western Electric Company was charging the Southwestern Company more than it was charging the New England Companies, say?

A. That is correct, excepting that it was even broader. It was to include all associated companies to see if there was no partiality shown at any point in the prices charged for its apparatus. The study was initiated in this way: The Interstate Commerce Commission in its valuation section some years ago called for reports from all telephone companies as to the cost of the items purchased in each half year for the years 1910 to 1915, inclusive. This was to be the price of the maximum purchases in each half year and the number of its order was known as "Valuation Order 18." All telephone

companies had to file this report, and for the Bell System Companies, copies of the reports were struck off and on file at the New York Office. This data was used as the means of checking the uniformity in prices.

Q. In other words, you wanted to see whether the prices the Western Electric Company charged for cable here in Texas 1335 was the same they charged in Maine or Massachusetts?

A. I couldn't take the item of cable, because cable is not on uniform prices on the cost of manufacturing, but other items, cords, condensers, jacks, and so on, are all items of apparatus which must hold the uniform price. Now, the method was to set up a chart for each company, and the prices for these standard items shown on these reports were listed for all of the years, 1910 to 1915 inclusive, and then extended on through to 1918-1919. Then these standard prices were checked against the price actually made to the Interstate Commerce Commission. Now, I wish you would observe that the reason they are all taking those reports, they were made from a totally different standpoint, the items reported to the Interstate Commerce Commission for its purposes, and therefore a study made on those reports could in no way be biased. The prices, as I say, then were checked against the charts established in this way and wherever an item was found not to agree with the standard price, the facts were run down to the originating papers, namely, the paid bills in the files of the associated company which made the report. Now, the result of that study is given in this, and for 10 companies which are listed here, it showed that for every thousand items checked there was a deviation or error of 1.7 items, which I

1336 think is a very extraordinary result. In my experience, I have known no set of bills to be as accurate as that.

Q. Well, that shows then that there are no inequalities in the Western Electric Company carrying out its contract with the associated companies?

A. I think that is demonstrated.

Q. Now, I wish you would turn to page 5 of Exhibit No. 142, Item 6, there?

A. Yes.

Q. Now, what does that Item 6 there mean?

A. This item is entitled "Remuneration," and it deals with certain special services which the Western Electric Company has agreed with the Southwestern Company to undertake at its warehouse. Now, this consists in handling certain classes of return material. It is items which have been returned from the field for one purpose or another, and the items here are classified and the nature of the work is designated and the remuneration to be applied for taking the work is specified.

Q. Now, have you made a study to ascertain what it would cost the Southwestern Company here in Houston to have these services from an independent source as compared to what it cost them under this contract?

A. I haven't made just that study but I have approximated it by

making a general study at the New York office showing the results for all of the branch houses consolidated under these various 1337 classifications of work, and also have checked that general result by a study analyzing in detail the cost at the Philadelphia branch house, which was taken as typical for the Western Electric houses in general.

Q. Well, please give us the results now of your comparison there, just take the items listed here under this Item 6, and tell us what comparison you found?

A. For performing the services described in the foregoing, the Western Electric Company will charge the Telephone Company monthly as follows: Class A: For receiving, classifying and delivering to proper space in the warehouse, crediting and keeping records.

Q. Now, what is the charge?

A. The charge for that is 1% of the value of all Class A material received at the warehouse and credited during the month.

Q. Now, if the Southwestern had had that service performed for it independently of this relationship by some other outside company, what would it have cost?

A. It is my opinion that it would cost approximately 8%, the figure ascertained at the Philadelphia branch house.

Q. A saving then of 7% on that one item?

A. Correct: Class B: For receiving, classifying, crediting, keeping records, storing, selling and handling from the time it is received in the warehouse until it has been disposed of. 2% of the selling price of Class B material sold from the warehouse during the month.

1338 Q. That is what the Western Electric Company charges?

A. Correct.

Q. What is the result of your study as to what it would cost independently of this relationship?

A. In the neighborhood of 15%.

Q. A saving then of about 12½%. I would like to state there that this particular classification refers to junk, and obviously the price of junk, the salvage of junk is very low, and the cost of handling it on a percentage basis appears relatively high.

Q. In other words, there is a saving on that of 12½% due to this relationship?

A. That is correct. Class C. For receiving, classifying, issuing credit, keeping records, storing for a period of not to exceed one year and re-issuing or disposing of, the remuneration is 7% of the value of all material credited during the month.

Q. That is the Western Electric Company's charge?

A. That is correct. The approximate cost of that service in my opinion is 9%.

Q. A saving there of 2% to the associated companies?

A. That is correct.

Q. Class D.

A. Class D, for receiving, storing for a period not exceeding one year and re-issuing or disposing of, the remuneration of the

1339 Western Electric Company to be 2% of all material, credited as Class D during the month. In my judgment, the approximate cost of that is 4%.

Q. A saving of 2%?

A. A saving of 2%, that is correct.

Q. Now, what about the direct shipments?

A. I have no figure in my mind for that.

Q. Well, is there any saving on the carrying charges?

A. I haven't any doubt that there is a saving there, but I couldn't quote any particular figure referring to it.

Q. Have you made any study on the figure on carrying charges?

A. No, I haven't made any estimate of that.

Q. Now, Mr. Cox, under this contract, or under this agreement with the Western Electric Company, is the Southwestern Telephone & Telegraph Company obligated to purchase through the Western Electric Company?

A. Not at all.

Q. In other words, if the Southwestern Company wanted to go out and buy a Kellogg switch-board or a Stromberg-Carlson switch-board, if such a thing as that were possible, it could do so?

A. It could do so direct, or if it preferred to do so, through the Western Electric Company.

Q. Now, in order to summarize your testimony, I wish you would give us the advantages which accrue to the Southwestern Company from this relationship with the Western Electric Company as briefly as you can?

A. Fundamentally, the advantage lies in their getting a better apparatus than they could obtain, if they were not a party to this arrangement. By using standard apparatus all the advantages of large volume are achieved, the price and cost are kept low, and the volume justifies the highest degree of expert study in making the apparatus perfect. The cooperation is obtained throughout the entire telephone field so that the benefits that are developed in one territory, I mean, the improvements that are suggested in apparatus in one territory immediately become available to all of the other members of the group. The further advantage is that in the design of this apparatus, the necessity for extensions is always kept in mind so that there is not the requirement that when extensions are needed, the new apparatus will not function with the old, but the continuous chain, continuous progress of development can be followed by any company without loss.

Q. So that this arrangement leads to the obtaining of more efficient and better apparatus?

A. Exactly.

Q. What is a second advantage?

A. A second advantage consists in the using of an expert purchasing force in order to obtain your goods. The advantages there come again from the consolidation and greatly enhanced purchasing power, enabling the lowest prices and the very best services. The ability to have the manufacturer give you preferred service and maintain stocks so that he is ready at any time to

1341

meet the requirements of the local company. The advantages also come about through experience in warehousing and delivering supplies.

Q. That is another advantage, is it?

A. That is another advantage.

Q. What about the lower cost of the material to the Southwestern Telegraph & Telephone Company?

A. There is no question but what the costs are very much less by reason of the volumes and the uniformity of flow of items through the manufacturing concerns, both of the Western Electric Company and outside manufacturers.

Q. That is both as to telephonic apparatus and as to supplies?

A. That is it.

Q. Independent manufacturers' profits. Does another advantage exist in the better emergency protection afforded the Southwestern Company?

A. Very substantial advantages offered there because the Southwestern Company need only carry supplies in-stock to meet its current needs with a very slight margin over that point, we'll say two months' supplies, on hand, whereas, back of it stands the branch 1342 houses of the Western Electric Company at strategic points, and back of that stands the central warehouse at Hawthorne and the manufacturers that are supplying hardware and other apparatus.

Q. Now, you have mentioned also the use of second-hand apparatus, is that an advantage accruing from the relationship?

A. It is an advantage that runs into very large figures, enabling the company with surplus items recovered from its plant to dispose of them properly, and contrary-wise, enabling the companies which still have items of that nature in their plants to maintain them with supplies at a very low cost.

Q. Now, are there any other advantages which you can think of which accrue to the Southwestern Company by reason of this relationship with the Western Electric Company?

A. The advantages not yet mentioned of eliminating from a local company all of the purchasing machinery which would otherwise be necessary, the Purchasing Agent and his force, his buyers and investigators are very largely eliminated. The matters thus take merely the formal course of requisition.

Cross-examination.

Questions by Mr. Howard:

Q. Mr. Cox, what percentage do you estimate, of the Tele-
1343 phone Companies of the United States are owned by the Bell System, or by the American Telephone & Telegraph Company, what you call the associated companies?

Mr. D. A. Frank: Are you going by corporations, or States, or amount of property, or what?

A. I haven't the correct figures in my mind, but I can give an off-hand estimate.

Q. It has been stated heretofore that probably they own four-fifths of them.

Judge Powell: The Government's report in February of this year says it. That is probably true. That would be reasonable. 4/5ths of all the wire.

Mr. Duls: I don't understand Mr. Cox's answer, or your question to him. On what basis are you putting that on, on the basis of all the telephone properties in the United States?

A. I think that is true on the basis of investment. I don't think it is true on the basis of the number of stations, but as I suggested, I do not pretend to know the facts.

Q. But you would think it is about four-fifths?

A. On the basis of investments.

Q. I don't care about being particularly accurate. Then those companies that you call the associated companies, or Bell
1344 Companies purchase all their telephone supplies from the Western Electric, that is, the telephonic equipment, the manufactured telephone equipment, aside from poles and supplies and things of that kind?

A. Not all of the companies that I have included in the answer to your first question, because you mentioned Bell System. Now, when you say Bell System, you include companies which are connected and they may not purchase through the Western Electric Company. It is the associated companies that—

Q. (Interrupting.) Well, these companies, associated companies, they are called, they own and control by far the greater part of the telephone plants, do they not?

A. I think that is so.

Q. And still you wouldn't think that four-fifths would be an exaggerated statement, do you?

A. I question that. The associated companies themselves, I don't think, have such a notion.

Q. And the Bell Companies and the associated companies give the preference to the Western Electric Company in their purchase of telephone equipment, do they not, the associated companies?

A. Only the preference by virtue of what they believe to be the best; there is no obligation.

Q. Whatever the reason is, they buy it from them?

A. Very largely.

1345 Q. Almost exclusively, do they not?

A. Very largely.

Q. Then the manufacturing concerns that are engaged in manufacturing telephone equipment as compared to the Western Electric is quite small, is it not?

A. I don't get that question.

Q. The magnitude of the Western Electric in its activities as a manufacturer of telephone equipment is far beyond any manufacturing concern, is it not?

A. I believe so.

Q. It perhaps manufactures, it would be conservative to say, four-

fifths of the telephone equipment in use in the country today, doesn't it?

A. I can't quote the figures.

Q. You judge about that?

A. Possibly.

Q. And it is conservative to say this 4/5ths of the telephone equipment is controlled practically by one concern, is it not?

A. Directly or indirectly.

Q. Yes, directly or indirectly. So that then what might be called the independent manufacturers have to, for the output of the contemplated manufactured articles, to look to not over 1/4 of the telephone world for their sale and the distribution of their products?

A. That would be the inference.

1346 Q. There are about how many manufacturing, so-called independent manufacturing companies that are serving this independent field or independent telephone operators?

A. I don't know how many, but there are three prominent manufacturers.

Q. Three. The largest is what one, Mr. Cox?

A. Well, I can't, by size, but the three I have in mind are the Dean, Stromberg-Carlson and Kellogg.

Q. Stromberg-Carlson and Kellogg?

A. Stromberg-Carlson.

Q. That perhaps is the most important manufacturer outside of the Western Electric, is it not?

A. I don't know which of them is the most important.

Q. Well, anyone of them is what you might term insignificant compared to the Western Electric?

A. That is true.

Q. The Bell Companies or associated companies are compelled by existing conditions, if for no other reason, to buy their products from the Western Electric Company, are they not?

A. They are naturally led to deal with the Western Electric Company because the advantages of that arrangement are so obvious.

Q. Well, eliminate that for the present, or overlooking it if you can for the moment, I know you are very strongly impressed
1347 with it, but see if we can just forget it for a moment; but aside from that, aren't the physical conditions such that they would be able to buy equipment from the Western Electric?

A. If I understand, you mean because the facilities—

Q. (Interrupting.) In other words, the volume of the needs is such that it cannot be supplied outside of the Western Electric Company?

A. That is true.

Q. That is true. To that extent, at least, it wouldn't be a free agent in its purchases?

A. That is true.

Q. Now, with that condition confronting us, Mr. Cox, it occurs to me that we should know something about the expense of these manufacturers and I have no doubt Mr. Duls overlooked it. You seem to be quite conversant and familiar and on good terms with

the Western Electric Co. Have they ever furnished you with a bill of expense, of the manufacturing expense of say a switchboard, for instance, like the one installed here in the Preston Exchange?

A. I have never personally reviewed just that item. I have made specific investigations of costs on other equipment and supplies, for instance, lead covered cable, I have made a very elaborate investigation of that.

Q. They have no doubt been kind enough to furnish you 1348 an expense bill of a switch-board, such as we have installed here. Did you ever ask them for such an expense bill?

A. No, I never had occasion to, so far.

Q. However, you are representing a lot of associated companies that are compelled to buy from them and you have never checked the expense of manufacture?

A. Not of switch-boards.

Q. Not of switch-boards?

A. The assembled item I haven't checked up to date.

Q. The switch-board is the most important item perhaps in the telephone operation, is it not?

A. Yes, but it is made up of many small items of equipment. Now, the individual items of equipment I have reviewed.

Q. But you are not prepared then to tell us in any way what the sum total of the items that go into the manufacture of a switch-board is as compared to the invoice or quoted price to your associated companies, including the Houston exchange here?

A. No, I couldn't tell you that.

Q. You couldn't tell us. You leave us entirely in the dark as to the amount of profit that is reaped by the Western Electric Company from the manufacture of these articles for all the associated companies?

A. No, I have only recently completed a study but that study includes the switch-board with the items that go into it. It 1349 doesn't differentiate switch-boards apart from the rest of the items, so I can give you a very close figure on the total profit in this item but I can't separate the switch-board from it.

Q. Well, I would like to see their detailed expense bills on these articles, Mr. Cox, because, Mr. Cox, without them we are in the dark entirely. We have had the pleasure of listening to eulogy of the Western Electric and it may be entirely correct and appropriate, but still I am just as much in the dark as I ever was about what profits they are reaping on this enterprise.

Mr. D. A. Frank: Well, why don't you ask him?

Mr. Duls: Why don't you ask him what the profit is.

Mr. Howard: He said he can't tell me.

Mr. Duls: Well, I will ask him a question or two.

Mr. Howard: I don't care for his general opinion about it. It is not a matter of opinion.

Q. I would like to know and I would like to see the expense bills, both in 1914 and 1919, on the switch-board and on the different items of lead cable and on the different items manufactured. Have

you any expense bills for the manufacture of induction coil?
1350 A. I haven't those bills.

Q. Or for a transmitter, or for a receiver, you haven't any exhibit showing that?

A. No.

Q. Well, those are the exhibits I am interested in.

Mr. D. A. Frank: You don't seem to want the information that you have been howling for in the last six weeks.

Mr. Howard: I told you at the beginning of this hearing that I think, as I still think, that the Western Electric Company is one of the indirect methods of profit of the American Telephone & Telegraph Company, who is conducting all these enterprises.

Mr. D. A. Frank: Why don't you ask him that question?

Mr. Howard: Why, I don't know. He is not prepared to tell me because he hasn't the data. He has brought us here a lot of incidental things, but the heart of the thing seems to be up in Illinois or wherever this concern is located. Well, we can't get anything out of that then.

Mr. D. A. Frank: You can't get it without asking the
1351 question.

Q. Well, let's turn then into the other branch, that is the purchasing agent branch. Now, aside from the functioning as manufacturers of telephone equipment, the Western Electric purchases everything else including this paper?

A. Excepting certain excepted articles.

Q. Excepting certain excepted articles, and for that service they receive certain compensation that is set forth in the contract, is it?

A. That on direct shipments from the supplier to the Telephone Company they obtain net cost plus four per cent. If the shipment is stocked at a Western Electric Company warehouse and then shipped to the telephone company, it is the net price plus six per cent. It is four and six.

Q. Now, if they order a shipment of poles from the National Supply Company and they are shipped through to Houston, \$20,000.00 worth of poles, the Western Electric Company gets for that service four per cent on \$20,000.00; is that correct?

A. There probably is a special contract here on poles.

Q. That is \$800.00 for—well, aside from—

Mr. D. A. Frank: Wait a minute. Let's clear that up before we get off of it.

1352 A. The special contract relates to poles purchased in the field, so that your proposition would be correct.

Q. It would be correct?

A. Yes.

Q. On \$20,000.00 worth of poles they would get \$800.00 for just ordering the poles shipped to Houston. Well now, maybe there is something there I can't see, but is that the extent of the service?

A. The four per cent, there covers development of the source of

supply, the passing the papers, paying the bills, handling the whole thing from start to finish.

Q. Well, what is there to handle, that is what I want to kind of get at. You mystify me, I want to see if I can get so I can see it clear. There is a bunch of poles out there at Escanaba, Michigan, standing out there in the forest?

A. Yes.

Q. And the Southwestern needs them down here at the distribution point, Dallas or Houston, and they tell the Western Electric Company they need \$100,000.00 worth of poles, and the Western Electric Company wires in the order. Now, what great skill, or energy, or responsibility is there to send in that order and what do they do with it after it gets in?

A. The first problem is that the poles are probably not shipped to all points, they are probably shipped to specific points, carload by carload, and those poles have got to arrive at the point where they are needed at the time they are needed.

Q. Well, you say—let's take \$20,000.00 worth of poles. About how many carloads would that be? An average pole now is worth about eight or ten dollars, isn't it?

A. I don't think it would be as much as that.

Q. Well, some of them are worth more than that?

A. Oh, say, \$4.00 would be my estimate, maybe it is too high.

Q. Five into twenty thousand, that would be four thousand poles. Have you any idea how many carload lots would be in 4,000 poles?

A. I don't know. A good many, evidently.

Q. Well, they ought to be able to carry a couple of hundred, say, there was 20 carloads.

A. A couple of hundred poles.

Q. A carload?

A. There—

Mr. Duls: Mr. Pennell can tell us how many poles in a carload.

Mr. Pennell: It depends a good deal on the size of the poles.

1354 Mr. Duls: How many, Mr. Pennell, on an average, say a 25-foot pole, how many to a carload?

Mr. Pennell: Well, I think they could run something like 50.

Mr. Duls: Might run up as high as 100, mightn't they?

Mr. Pennell: Well, 50 is twice a hundred, wouldn't run that much.

Mr. Duls: One Hundred is twice fifty, you mean?

Mr. Pennell: Yes.

Q. Well, 50 then, 50 into 4,000, would be 80 cars. What would the Western Electric Company have to do about that?

A. It would have to follow those cars right straight through from shipment to destination.

Q. Follow them how?

A. By means of the ordinary means of freight tracing, so that they would know just where those cars are.

Q. Aren't you giving the railroad operators credit for any sense at all?

A. Unfortunately, you couldn't trust the railroad where you would have your gang hung up waiting for those poles.

1355 Q. So it would cost you Eight Hundred Dollars on Twenty Thousand Dollars' Worth of Poles, to see that those poles arrive at destination.

A. For all of those services connected with that, in which this is an incident.

Mr. D. A. Frank: Go on and tell what those services are.

Q. Yes, I would like to know what those services are.

A. Well, of course, the poles are all inspected, every single pole is known to be up to standard, the bills are paid through the Western Electric Company, there is a certain interest involved in carrying these before they are paid by the telephone company; there is, of course, all the billing.

Q. Where is the inspection and what requires that the poles are of a certain standard requirement, and if those requirements aren't met, they are not going to be paid for, will they?

A. If poles that aren't up to specifications are delivered, then there immediately falls a substantial loss on the telephone company because the gang, — you might reject the poles, but you can't provide the men with work.

Q. They deliver these poles F. O. B. a certain place, don't they?

A. They usually deliver them, such a shipment as you
1356 have in mind, along the road; that is not a stop over or such a matter as that; that is to provide poles at a great many places, and those would have to be—they are ordered for particular purposes, and they are ordered for gangs that are going to use them, and if they are not delivered on time, there is a loss in labor, if the poles are not in exact accordance with the order, there will be a loss of labor. It is a very serious matter, and where you have gangs that way, you can't afford to take a chance.

Q. Well, let's see where the loss in labor are going to occur?

A. The first thing you are going to do, the first part of the construction is placing the poles. You can't put on the cross arms, you can't string your wires—

Q. (Interrupting.) We are not building telephone plants. We have got that some time ago.

A. You are building poles.

Q. We are putting in poles and supplying poles, and maybe building a little extension of the pole line. Now, where is this? Let's get down and see about this real money that is being spent. Here is \$800 for buying an order of poles, and let's see now where you turn loose some real money. You send in the telegram first to the manufacturer that you want these poles delivered at a
1357 certain place?

A. Yes.

Q. All right, then what is next?

A. Certain poles.

Q. What is the next step?

A. The next step is to be certain that those poles are of the right

kind, which are actually shipped, how they are shipped, the car numbers and every other detail that will serve to identify the shipment at a subsequent time.

Q. Now, doesn't the pole supplier charge himself with any responsibility at all?

A. The pole supplier? Of course.

Q. What does he do?

A. He gives what he considers good material, but matters of that kind—

Q. (Interrupting.) What do you do towards delivering it?

A. He puts the stuff out where it can be inspected, and it is inspected when it is thrown on the car. The pole supplier offers the material and the telephone company starts it, inspects it there and knows that the right stuff is actually shipped.

Q. Notwithstanding the supplier is under the obligation to meet specifications when he delivers his poles?

A. It is exactly the case that I have had in my own experience where I have been dealing with underground conduit. You
1358 find that is sometimes made of wood, creosote, and I have seen duct installed in the trench and the thing covered up and an expensive pavement reproduced over the top—

Q. (Interrupting.) Now, I am talking about poles.

A. This is wooden work—

Q. (Interrupting.) If you don't mind, we will stick to the poles. The supplier is to furnish poles up to a standard, certain specifications, and to deliver them at some particular place?

A. Well, I want to give my illustration of that, and my illustration is the case of duct uninspected delivered on the job, the result being that it gets into the plant and at a subsequent period, when you come to draw the cable, the cable cannot be drawn, and the hole has to be—

Q. (Interrupting.) Let's see. We'll branch off into ducts. Where is the cable installed and where is it put in and where is it?

A. This is an underground cable—

Q. (Interrupting.) Put in at a certain plant?

A. Yes, sir.

Q. And the Western Electric Company has a man here at a—at the place of installation seeing that an improper duct doesn't get under ground?

A. That is their process of inspection.

1359 Q. Do they do engineering work for these companies, this structural work you are speaking about now?

A. I am talking about just the duct itself, the raw material which is factory made, that is inspected.

Q. You mean inspected at the factory?

A. I mean inspected at the factory.

Q. Now, what is the man here that is putting it into the ground, what is he doing to let a piece of bad duct get by him?

A. Because the man there that is putting that into the trench is a much lower grade of labor. He is a German or Polander.

Q. Well, we have been charged up here time and time again with all sorts of supervision charges, contingencies and omissions and everything of that kind. W-at are those men doing here?

A. I don't know what kind of duct was referred to here, I am talking about creosoted wood duct.

Q. Cresoted wood duct, although the manufacturer is under obligation to deliver a standard article up to specifications, yet you inspect it and get paid for inspecting it and create that charge against the consumer?

A. You are getting a little involved here, but the case that I presented is what happens when the duct is not inspected.

1360 Q. Yes, you say that the duct that is not inspected will come through here and goes out into the plant?

A. It gets in the plant.

Q. Well, but you are assuming now that there's nobody got eyes at all here on the—

A. (Interrupting.) No, I will for your benefit just explain the one further step that is obscuring the matter in your mind at present. This creosote duct: There is a three-inch hole bored right through this.

Q. I know what a duct is.

A. Now, that three inch hole doesn't start 3 inches, it starts with a smaller hole, say two inches in diameter. In other words, the bit that makes it is small and then it enlarges as it goes back. You can hold that thing up to the light and you can see a nice round hole at the other end, and unless you have got a very capable man, he will say this duct is all right, but it wasn't mandrel inspected at the factory.

Q. Who manufactures these ducts?

A. They are manufactured at various places.

Q. Then the basis of your whole charge is on the assumption that a manufacturer won't comply, although he is under obligation to do it, won't comply with his specifications and that perchance the duct will get by the factory and their inspectors there?

A. Yes.

1361 Q. Every well organized factory has its inspectors to see that they are not shipping out bad ducts and that they are not bringing down upon them the complaints of the commercial world from whom they are trying to get the business?

A. They have people that do it, but everybody makes mistakes.

Q. Everybody makes mistakes, but now for fear that there might a few, one or two, or half a dozen, of these get by the manufacturer's inspector, the Western Electric puts an inspector on there and charges for it, and then sends the ducts down here to the plant, and then the plant engineers go to install the ducts in the plant and it gets by them, but you haven't any protection against any such mishap happening down here in the plant?

A. The principle is just this, that the most economical method of construction is followed. Now, if that method means a higher degree of inspection at the source, that is the method followed. If it is best to stand a certain amount of defective material delivered on the

ground, that method is followed. But always the thing is considered in its peculiar aspect, as to which in the long run, which is the cheapest and the most economical.

Q. Now, this company, this American Telephone & Telegraph Company that is contracting with another company that it owns has come to the conclusion that it is the most economical thing to employ one of its own companies to inspect all these articles as they
1362 leave the different factories?

A. It is necessary.

Q. To prevent a chance of a piece of duct getting underground when it ought not to have been there?

A. Exactly, if you don't inspect it—

Q. (Interrupting.) Well, let's say we are inspecting duct now, a high, reputable manufacturing concern has its own inspector as these articles go out to the transportation company. Now, when he looks through these ducts, why don't he discover it?

A. Well, he is dependent on human labor.

Q. What is the Western Electric Company dependent on? You don't have men of your skill and intelligence look through ducts as they go along?

A. They have exactly that type. They have men that have been trained in the art. I have done it myself.

Q. Do you mean to say—

A. (Interrupting.) I have done it.

Q. But you are not doing it now?

A. Well, I have done it once, and I am the same man that I was.

Q. Well, but to get your mind back to that, that is the service that you perform for this 4%, upon every direct shipment that comes from the factory to this plant; here, they are paid the 4%?

A. Yes.

1363 Q. Twenty-five four per cents make one hundred per cent, doesn't it?

A. Obviously.

Q. What is to prevent an ordinarily intelligent man here like Mr. Prentice sending a wire to the National Supply Company telling them to ship a certain number of poles, and when the poles get here to look at them and have them inspected by his engineers and if they are faulty to bill back to the manufacturer the loss?

A. That could be done excepting in the cases where you have your accounts coordinated with the stream of material. Now, if you can afford to switch your accounts to other work and to make up the loss in time while you are waiting for the poles to be shipped and replace them, why that could be done.

Q. Isn't it a fact that all this standard of organization and efficiency is due to the fact that you must have it in order to conduct these large incorporated or associated companies that are practically absorbing the entire business of the country, and it is the fact of the volume of the business that itself makes it top-heavy with all this organization and this added expense added upon expense in the way of organization?

A. It is this: By adding these features of protection by standard-

ization, we are enabled to do a far better job at a far less
1364 expense. Let me illustrate——

Q. (Interrupting.) We'll admit that, Mr. Cox, where you are carrying on a business of this volume all over the country and in order to handle it at all, you have to standardize it. In other words, individuality largely is eliminated and you work things according to standardization?

A. Yes, sir.

Q. And you adopt a lot of standards and practices, this and that, and A and B and C and D when you run out of numerals?

A. Yes.

Q. And refer to them in that way and you try to apply that all over the country to all of the different and changing conditions of the country. Now, I say, aren't those things brought about just by the building up of a top-heavy system of that kind and that an ordinary independent concern operating a telephone company would not be burdened with all these charges that you are tacking on here like the American Telephone & Telegraph Company and the Western Electric Company charges, and there's two sorts of incidental and overhead charges before these articles ever get in use to the consumer here?

A. Now, the individual company——

Mr. D. A. Frank: Answer his question, Mr. Cox, answer
1365 that direct question.

Mr. Howard: Let Mr. Cox testify, if you don't mind; he is a pretty intelligent man as I judge him.

Mr. D. A. Frank: We agree that he is intelligent.

Mr. Howard: Well, let him alone.

A. (Continuing:) Your illustration is that the small company can get along with much rougher, cruder methods?

Q. No, it is not necessarily that.

A. I thought that is what you did say.

Q. No. They don't need this standardization, standardization costs money. You have illustrated that. It costs money. Now, I say that an independent concern here and the independent manager can order its poles without any tribute of 4%, or \$4 out of every \$100 that he employs in his investment.

A. Now, the answer is this: Now, the independent manager is doing a local business, it is right there, it is not attempting to do anything but a local business. Just as soon as you have a national situation, your plant must be built to function with Boston, Minneapolis, or San Francisco, you are on an entirely different
1366 plane. The perfection of your detail must be absolutely assured, and you cannot do it by the haphazard manner of letting the manager decide.

Q. Now, there is the trouble as I see it, Mr. Cox, you all have got your ideas built upon the perfection of the great business plans that you have worked out that enable you in rather a smooth way to run a business of tremendous magnitude; you have gotten that figured out; but you take an independent company here operating

this local telephone exchange and all those toll lines reaching to those cities that have these local exchanges, then isn't the local concern relieved of the necessity of a great many of these expenses that you are building up in the way of purchasing agents and high-priced organization for engineers?

A. They are relieved of the expenses of that organization, and they are also debarred from the profits, from the benefits which such an organization achieves. Now, take as the simplest case the standardization situation. I mention that because it is exceedingly simple but it is one of the most recent things that has been done, and therefore it is absolutely fresh in my mind, and the conditions are exactly what you are setting up in regard to the plant. Now, 1367 three years ago we made such a study and of course, in order to make a standardization, you have got to know first of all what is being bought. So we went through and got the tabulation, all of the different kinds of items that were being bought, and what did we find? We found that rubber bands,—why, you say, that is simple, any office boy can go out and buy rubber bands,—we found that we were using five tons of rubber bands in the local system, and that those rubber bands were being purchased all the way from 80 cents a pound to \$2.24 a pound, the identical rubber bands from the same manufacturer in many cases. Now, what happened? When they were standardized, we bought all the rubber bands we needed at 60 cents a pound. There is the advantage. We might pay 4% but we save 35% on some items.

Q. But what occurs to me, this economy is just like the old lady that said her husband filed a darning needle in half a day so that it was just as good as new. Now, take a local concern, they don't need to have a corps of engineers to buy the rubber bands. Now, they might—there wouldn't be any great saving in that, would there?

A. It is settled once for all. You have made the study, found out the size of the bands that you ought to use, you have saved all of the little purchasing agents from considering the problems 1368 at all, and you buy what you want under a contract which is very highly beneficial in the price.

Q. I understand that, but here you have got pointed out to us this 4% and your Western Electric Company service, but the service is costly, the thing of keeping a corps of engineers in the City of New York, four or five hundred employees, and 16-story buildings, and the traveling expenses, and these engineers all over the country, it is a tremendous expenditure of money. Those things while they are nice and standardized, yet they have to be paid by somebody, the business has got to carry it finally. Now, I will just ask you this question, as I asked Mr. Blair Smith yesterday,—The evidence in this case shows that at a rate, at the highest rate proposed, submitted as the highest rate the traffic will bear, \$9 and \$3.50, that they set aside the depreciation fund that they say they are entitled to, they pay the operating expenses, and after all those things that are stated as legitimate charges are paid, in a community they say is well adapted to the industry, and the people are educated to the

use of it, and there is a demand for it, permitted to charge all the traffic will bear, it won't show a return upon the investment of one per cent. How do you men that are skilled and up to the art of telephony, how do you account for it?

1369 Mr. D. A. Frank: We don't think the testimony shows that, Mr. Howard.

Mr. Howard: Well, I think it does.

Judge Powell: Well, that is just a question of the construction of the testimony.

Q. But if it does show that, then what—where is the trouble, how do you account for it, where is the wrong?

A. Well, I am not familiar with that case and I would rather be excused from attempting an answer to that.

Mr. D. A. Frank: How could a man answer that question if it were true?

Mr. Howard: Well, there should have been some investigation, or some management, it may be that this so-called efficiency that you are indulging in is not what you claim for it, because these are stern facts that confront—

Mr. D. A. Frank: It might be true also that the City had refused to let the rates be raised and the people are not educated to the proper rates, not enough to pay a fair return.

Mr. Howard: No, that all seems to be demonstrated, more applications for phones.

1370 Mr. D. A. Frank: I know but at reduced rates, not at a fair rate.

Q. Now, Mr. Cox, as I see the situation, your relation with the Western Electric Company, you have a great many companies engaged in the operation field that are using a certain class of equipment and great quantities of it.

A. Yes.

Q. You have another company that is owned by the American Telephone & Telegraph Company, well, I am saying owned, in the sense that it owns the stock, that is engaged in the manufacture of this equipment, the conditions are such that the users of the equipment have to buy direct from the manufacturer, what is there, what law of Congress or of trade, or self-interest, or anything, is there that protects the consumer from paying or having to pay any price that is levied upon him by the manufacturer other than the ordinary sense of justice that might exist?

A. It is the very exceptional conception of the Bell System to give the best service at the cheapest possible price.

Q. Well, now, you see, we are in the attitude of where we have to take your word for that, you all tell us that, you tell us that we are getting the best service and we find the service is coming very

1371 high. You are asking for exceedingly high rates and the facts that the company that is operating here and putting in this property is also engaged in the manufacture of this equipment and selling it to us, and it is acting in a dual capacity, both selling

us the public service here and putting into operation the property upon which it asks for a return. Now, it has the whole situation in its control, the exclusive, practically speaking, the exclusive manufacture of the product and can require purchases from its manufacturer and under those conditions, then it puts the property in here and asks these people to pay a return; there is no freedom of contract between the operators, between the operating company here and the manufacturer. Now, we are entirely dependent upon the sense of justice of the American Telephone & Telegraph Company as to what it is going to charge us for this property that we are paying a return on, aren't we?

A. You can ascertain if you wish what this service is actually netting in the way of profits; there are facts available that I can testify to if you care to ask me.

Q. Well, that condition does exist that there is no limit, the more the manufacturing concern that furnishes the property here for use charges for the manufacture of the product, the more the profits will be to the owner, to the real owner of the company that uses it, won't it? We are in that situation, that the more the owner pays for his property that he puts in use here——

A. (Interrupting.) Yes.

Q. (Continuing:) The more that will come into the pocket of the real owner of the operating property?

A. That is a possible condition, but that is not the condition that I am here to tell you if you want to know.

Q. But we have reached the condition in the telephone business today in this country where every user of telephones is using it with that condition confronting him, haven't we?

A. Yes, yes.

Q. Now, you say that you are here to tell us that you have not abused the power that you have in that regard?

A. Yes.

Q. Well, can you tell us now, just in a general way, or can you give us the figures such as I referred to a while ago, the expense bills of the manufactured products?

A. To take one single item of the manufactured product and reply on that would not be a suitable answer to the big problem that you are confronted with. You have got to consider the whole classification of supplies. Now, that is the figure that I am prepared to give. You want to know in this case of this telephone apparatus that is what the Western Electric Company manufactures and the contract on that has run less than 8% of the investment in order to produce it.

Q. Well now, you tell us that, Mr. Cox, and, of course, I haven't any idea in the world but what you are a truthful gentleman, but back of that we have to take it upon trust, because we haven't seen any exhibits of expense.

Mr. D. A. Frank: You wouldn't know what it meant if you did see them.

A. It would be fragmentary, there is nothing to it.

Q. Have you any way of arriving at it? Why do you say that it is less than 8%, Mr. Cox?

A. Because the bookkeeping for the Hawthorne warehouse where these items are manufactured is so segregated that the cost of making the telephone apparatus are kept separate from other organizations and I have reviewed those prices and know that for that industry as a whole the production of those items has been less than 8% of the cost of investment to produce them; individual items, some of the items might be more than 8% and some might be less, because there are a great many things that enter into the question of price for individuals.

Q. You tell us now that you have gone over the detail, the cost of the raw material and added the freight charges to the factory, 1374 and the overhead expenses of the factory, the labor costs of the manufactured article, and the return upon the capital engaged in the manufacturing industry, and have detailed all those different items that make up the final cost of the product?

A. Those have all been segregated.

Q. You have segregated and gone all over those and applied them to the different items of manufacture, different articles of manufacture?

A. No.

Q. I want to see how you get at your average. You must have applied them to each article of manufacture before you got it, because this is the general average of 8%?

A. No, no, I couldn't give the cost of each item. I can give the cost of the whole thing and then by subdividing that, you get to the cost of any particular item, but to get the whole is a far easier process than to get the various parts under the system of accounting that is followed. You can get the whole classification very easy. Those are big units.

Q. How did you get this information of 8%? I am interested to know that now. Just how did you arrive at it?

A. There are certain accounting processes that are followed in the Hawthorne works. The first step is to verify and see that the accounting processes that are followed will produce correct accounting results. That has been done. The next is to verify sufficient 1375 of those transactions to certify that the accounting processes are infallible. Now, when that is done, you can use the summaries as they come from the Hawthorne works to build up your studies and arrive at the actual figures of the cost of the product.

Q. How much time did you ever put in checking the Hawthorne house, Mr. Cox?

A. About 10 days at Hawthorne and with other people. I haven't done this alone.

Q. How large a staff did you have?

A. Well, at that particular time, there was 40 men including myself and in New York I had 2 men working for some weeks on the matter.

Q. And you satisfied yourself that the profit, average profit of the Western Electric Company on its manufactured products, was 8%?

A. Was less than 8%.

Q. Was less than 8%, and yet upon a mere order or shipment, the Western Electric Company charges 5%?

A. Well, now, that is another classification of the business. Perhaps I didn't get your question just right.

Q. I know, but I was trying to get something about these relative values.

A. Would you like to know the profits on that side of the business, would you like to know the large sums that are being
1376 secured from that branch of the service?

Q. I am not particularly interested in it unless it will throw some light on this investigation, because I am not losing sight of that after all that we are trying to find out what earnings are involved here and what property is invested and what returns, either directly or indirectly, are accruing to the American Telephone & Telegraph Company.

Mr. D. A. Frank: Why don't you let him do it then?

Q. If it would throw some light on this, I would like to know it then.

A. It is less than three-tenths of one per cent.

Q. What is less than three-tenths of one per cent?

A. The profit on handling this business of buying from other manufacturers and acting as the agent in supplying the Telephone Company with these items.

Mr. D. A. Frank: Including poles?

A. (Continuing:) Including poles.

Mr. Duls: And rubber bands?

A. (Continuing:) To be still more specific in the matter, there has been a total of over \$250,000,000.00 purchased that way
1377 and the net profits on that business have been \$30,000.00.

Q. Mr. Cox, not doubting your good faith at all, but yet very much dissatisfied with this question of 8%, due to your close relationship and good terms upon which you stand with the Western Electric Company, can you get an expense bill of the switch-board manufactured?

A. I could get such a bill, but it would not be what you anticipate, owing to the method in which that bill is put up.

Q. Well, I want to know, isn't there some way, it is a thing which can be done and any manufacturing concern should do it, is to keep the cost of their manufactured article from the time the thing leaves the forest or the mine, or whatever it is, until they turn it out ready to be put upon the cars, and if they don't do that, whether it is the Western Electric Company or any other concern, they are not running their business in the right way.

A. The Western Electric Company can tell you the price, but don't take the switch-board, take an item of the switch-board, take that desk stand. Now, that desk stand is made perhaps of—well, we'll say 20 parts, each one of those parts is in process, going right through the factory all the time and you cannot say that that com-

1378 pleted desk stand was made of certain parts made at a certain price. You know that the parts are coming along at one time, other parts at another time and the same parts go into the same thing, and that may be built up of other parts accumulated through different things at different costs; in other words, it is a conglomeration of items. Now, you would have to go down and get the detail that would show you the cost of the base——

Q. (Interrupting.) It is rather an exceedingly detailed transaction and it would be a detailed method no doubt, but as it involves a good deal of money, and it should be done, it looks to me that you come here with an operating and manufacturing branch of this same concern and are charging, putting in this manufactured product, there ought to be a clear showing as to what the profits are, and I don't think you have showed it.

Mr. D. A. Frank: Well, we think we have.

Mr. Howard: Well, let it rest on that.

(By Judge Powell:)

Q. Is that 8% of the capital stock or 8% of the volume of business?

A. 8% on the investment to produce it. That means, the plant, the machinery, all of the fixed capital involved in making that turn out. In other words, it is your gross less your expense
1379 applied against the investment in your plant.

Mr. D. A. Frank: Why don't you find what the American Company get out of it?

Judge Powell: They get the 8%, they own it.

Mr. D. A. Frank: No, that isn't the dividend, that is what they make on it.

Judge Powell: It don't make any difference whether you get any dividend or not, Frank, same as you acquire a surplus.

Q. Does the Western Electric Company discriminate against independent telephone companies?

A. It charges independent companies a higher price than it does the Bell Companies for the same items of apparatus.

Q. What is the reason for that, do you know?

A. One reason is that they get no other service.

Q. They get what?

A. They get no 4½% service.

Q. Why, I thought the American Telephone & Telegraph Company was the one got the 4½% service?

A. They get the lower price on the apparatus.

Q. What is that?

A. They get the lower price on the apparatus.

1380 Q. Who does?

A. The associated companies pay 4½% to the American Company and they get the lowest price from the Western Electric Co. The independent company makes no such payment and it has to pay a higher price.

Q. Is that the idea? In the different charges you try to add on that 4½%?

A. I am simply stating facts.

Q. They discriminate against the independent companies?

A. Not a discrimination. There is a differential against them, that is all.

Q. Now, is there any purpose, do you apprehend or do you know, to put the independent companies, to embarrass them in carrying on the business?

A. To put the——

Q. (Interrupting.) To put the independent companies to disadvantage in carrying on the business?

A. Not the least, but obviously the service to the independent companies would be second to the service to the Bell Companies.

Q. The American Bell Companies are absorbing and taking over these companies one at a time?

A. Whenever permitted by the legal authorities at Washington.

Q. Undertaking to get control of all the wires in the United States?

1381 A. Just as required by the local authorities and as agreed to by the Department at Washington, Department of Justice.

Mr. D. A. Frank: Selling a good many too, aren't they?

A. Yes.

(By Mr. Howard:)

Q. The Bell Company selling a good many telephone companies?

A. There has very frequently been an adjustment of territory, Bell retiring from the one section and the independent retiring from another section.

Q. Now, Mr. Cox, you have given us the fullest information you can in regards to the profits of the Western Electric Company, have you, upon the manufactured articles they sell to the consumer here in Houston?

A. I think I have given a very excellent, very full explanation of the situation. It could be extended indefinitely, but——

Q. (Interrupting.) You have overlooked a fact, which we have got to consider a little bit, material, the detail of the manufactured cost of the Western Electric Company?

Mr. D. A. Frank: Manufacturing what?

1382 Q. Manufacturing cost; you tell us certain things about profits, but you haven't furnished us for some reason, perhaps over-looked it.

Mr. D. A. Frank (interrupting): He has testified about that for half an hour.

Mr. Howard: No, he hasn't furnished us a thing. If you will show any bill or detail of manufacturing cost, I will refer to it.

Mr. D. A. Frank: Why didn't you send an auditor or expert or somebody to Hawthorne to find out something about it?

Mr. Howard: Because you are coming here, asking for an in-

creased rate and leaving this proposition open, your manufactured articles that we are forced to buy, and we don't know what profits you are making on them. If you are making these profits, undoubtedly you are not entitled to equitable relief.

Mr. D. A. Frank: Why don't you ask for that?

Mr. Howard: I have asked for what we are entitled to.

Mr. Duls: Furthermore, you are not compelled to buy it.

Mr. Howard: Why, he has stated that and anybody that
1383 knows, knows he is compelled to buy from the Western Electric Company. That is all. Without the detailed records of the manufacturing cost, I think we are right where we started from on this proposition.

Mr. D. A. Frank: I think you are.

Redirect examination.

Questions by Mr. Duls:

Q. Mr. Cox, this paper and these rubber bands and all that Mr. Howard was asking you about was all furnished under this supply relationship?

A. Yes, sir.

Q. As distinguished from the manufacturing relationship?

A. Entirely.

Q. You say that the profit that the Western Electric Company makes on this supply arrangement averages less than three-tenths of one per cent?

A. I do.

Q. Does the Western Electric Company have any stock, is it a corporation?

A. It is.

Q. Do you know what per cent return the stock pays?

A. Yes, there are two classes of stock. There is preferred
1384 stock, of which there is 300,000 shares, paying 6%, and there is common stock of no par value which at the present time is paying \$10 a share.

Q. \$10 a share, what per cent is that?

A. It has no par value, so that you can't—

(By Mr. Howard:)

Q. Just pays a return of \$10 a year, you mean, Mr. Cox?

A. \$10 a year.

Q. No par value?

A. In other words, on the books of the corporation, the issue of this stock without par is applied against the surplus, and there isn't any surplus so-called, it is not designated that way, but the amount set opposite the issue of this stock as a liability is the amount of what would be a surplus.

Q. How much of that common stock you say there was?

A. 180,000 shares.

Q. How many shares of preferred?

A. 300—

(By Mr. Duls, interrupting:)

Q. And the preferred pays 6%.

A. Yes.

Q. Have you any way of reducing the common stock to a par value and ascertaining what the return on that would be?

A. I haven't the figures to do it.

(By Mr. Howard:)

1385 Q. In arriving at this 8%, did you check up carefully the salaries of the officers of the Western Electric Company?

A. The pay-rolls were examined.

Mr. Duls: They are expenses, pay-rolls are an expense account. How is a man going to ascertain the return unless he knows what the expenses are?

Mr. Howard: Well, I asked him. They pay-rolls would be a nice thing too. Where you have got a nice proposition like that, if you don't work it, I think you are paying for it, that is all.

(By Mr. Duls:)

Q. Are these associated companies able to purchase their supplies through the Western Electric Co.?

A. No, not at all.

Q. Can they direct the Western Electric Company to buy from independent sources altogether?

A. They can and they do it.

Q. I mean, independent sources?

A. I shouldn't say they do because they don't direct them to buy wholly; they do direct the Western Electric Company to buy from time to time from independent companies.

Q. For example, the Dallas Telephone Company is installing automatic equipment in the City of Dallas at the present time
1386 in some of its exchanges. Is that purchased through the Western Electric Company?

A. It is.

Q. Still from whom does the Western Electric Company purchase it, do you know?

A. No, I can't answer that question specifically.

Q. Do you know whether there are any other Bell companies that are purchasing from the Automatic Telephone Company in Chicago?

A. I am not familiar with that fact.

Q. You do know, however, that there are instances in which the Western Electric Company purchases telephone apparatus manufactured by independent people like the Kellogg?

A. I do.

Mr. Howard: What does the Western Electric Company purchase at all, it is not—

Mr. Duls: Well, you tried to get Mr. Cox to say that the associated

companies were compelled to buy from the Western Electric Company, you mean the associated companies?

Mr. Howard: I mean the associated companies, through the Western Electric Company.

Mr. Duls: Well, you didn't say that.

Mr. Howard: It was my mistake then.

1387 (By Mr. Howard:)

Q. Well, Mr. Cox, I understood you to say awhile ago, and it is probably the fact, that they are practically required by the conditions, there is no supply that is adequate outside of the Western Electric Company, didn't you?

A. That is true, nothing to do with the contract, just the physical conditions of the business.

Q. That is what I mean, the physical conditions are brought about so that to all intents and purposes, they have to buy from this Western Electric Company?

A. That is right.

(By Mr. Duls:)

Q. Do the independent companies purchase any material from the Western Electric Company?

A. They do.

Q. Do you know what percentage of the business of the Western Electric Company was composed of sales to independent companies?

A. It was nearly 50% last year.

Q. Do you mean that the Western Electric Company's total sales of telephone apparatus was 50% to Bell Companies and 50% to independent companies?

A. As I recall the figures of last year's business, it was \$70,000,000.00 to Bell System companies and \$67,000,000.00 to non-Bell Companies.

Q. Naturally, if the Western Electric Company was making unreasonable profits on its manufacturing business, it would have to charge unreasonable prices for its manufactured articles, wouldn't it?

A. It would.

Q. Does the fact that the independent people buy material from the Western Electric indicate to your mind that the prices are reasonable, or unreasonable?

A. It indicates that the prices are reasonable.

Q. Does the Western Electric Company sell in competition with the Independent manufacturers?

A. It does.

Mr. Howard: Your Honor, I don't think that this line of inquiry should be indulged in and especially when there is better evidence to be had. This is the situation that is developed here, that this American Telephone & Telegraph Company, which owns the two companies, the Western Electric Company and the Southwestern, the

Southwestern is operating a telephone plant and giving the public telephone service. The same company, which makes it all the same thing, is engaged in manufacturing, and they are before this court seeking equitable relief restraining the functions of the rate regulating body. Now, when that relief is invoked, and I am saying this now at a time when they can put in the testimony and do it before they can invoke equitable relief, it devolves upon them to
1389 make a full and fair disclosure of the manufacturing branch that is furnishing this material to this operating company.

Mr. Duls: We have been spending the whole day——

Mr. D. A. Frank (interrupting): That is what we have been trying to do all along.

Mr. Howard: You are trying to do it by indirection, and coming here and asking a man his opinion about things and coming here and asking his conclusion about a matter when it is within your power and within the power of the company that operates this exchange here and that also owns the manufacturing company that sells the equipment that goes into this exchange and fixes upon it the values and cost upon which you are seeking a return, it is going to devolve upon them to show a clean bill of health in regard to its relations with the Western Electric Company and that can be done only by bringing in a man not connected with the Western Electric Company or who is connected with them and incidentally and who in a cursory way checked up its books, but if they want to do these things let them come in here with the operating managers of the

Western Electric Company and make an exhibit of the cost
1390 of their manufactured products and the prices that they are charging because until that is done, there is no definite testimony and there is nothing upon which there can be any determination as to the profits that can be indirectly forced from this community here by levying profits upon manufactured articles under this compulsory—these compulsory sales. Now, they needn't do it unless they want to, but they are going to confront this proposition of asking for equitable relief when they have not and are not making a full disclosure by the best testimony that is within their power to bring forward upon that matter.

Mr. D. A. Frank: I venture to say to Your Honor, that if there were 400 witnesses possibly that we could get and we have had 399 out of them here, that counsel would object that we didn't have the 400. Now, it wasn't incumbent upon us to go into this matter at all. We have done it because of the intimation thrown out by counsel in the beginning of this case that there was a great secret profit made by the American Telephone Company with its relations through the Western Electric Company. That proposition is not before this court. We are getting off into interrelated companies and finding out what costs have been incurred in making certain pieces of manufactured articles for the telephone industry.
1391 The question before this court, as I have called to the attention of the court quite a number of times since the beginning, is whether or not by the ordinance of the City of Houston establishing certain rates, that the property of the Southwestern Telephone &

Telegraph Company is being confiscated. The question as to whether or not we are paying the proper amount for our equipment and for the tools and for the telephone apparatus which we are using does not become pertinent. It is not a question as to what they cost, but the question is whether or not the cost to us is reasonable. When we come in here before Your Honor, and show that the Western Electric Company is the largest manufacturer of telephone apparatus in the United States, and that—

Mr. Howard (interposing): You might say the sole manufacturer.

Mr. D. A. Frank (continuing): It is not the sole manufacturer.

Mr. Howard: Practically so.

Mr. D. A. Frank: It is not the sole manufacturer. It is the largest and it is probably the largest because of the fact that it has been doing business on a reasonable basis. Now, we have
1392 come in here and we have shown that in a purchase of \$550,000,000.00 worth of apparatus for the telephone companies, the associated companies of the United States, there was a profit to the Western Electric Company of only \$30,000.00, indicating that the work was being done for the associated companies practically at cost, that on the manufacture of the instruments which have gone into this plant, the Western Electric Company has made less than 8%, it is well known to Your Honor, and it is a matter of common knowledge that most manufacturers get from 15 to 20 per cent ordinarily, and that during these war times they made a considerably higher per cent than that.

Mr. Howard: Right there, I wasn't urging any objection here with the idea that the court is going to rule on it. I am just wanting to state to you now, that this is not the best evidence to make before this court of what I consider a fair disclosure. You speak about your eight per cent and you proved that by a witness who is not connected with and who is not one of the operatives of the Western Electric Company. We have asked you for the records of the company showing in detail and in the best way what you are making and what these articles cost you. Now that is for you. If you think that you have made such a disclosure as one who is seeking equitable relief
1393 is called upon to make, why let it rest there. I am perfectly willing to, but I want to notify you now that I don't consider that you have done it.

Mr. D. A. Frank: Well, you wouldn't be satisfied it would make no difference what you had.

Mr. Howard: Well, I may be wrong.

Mr. D. A. Frank: I think you are wrong.

Mr. Howard: But it is my idea that coming in here and instead of trying to prove in an indirect way by general conclusions and by statement of round numbers that you make 8% that you are in a position because this company here owns them both that it has all these records within its control, and that they haven't been forthcoming. That's all I have to say about that. You can go on and put in all this indirect testimony that you want to, all these collateral matters, and withhold the best and direct evidence if you care to do it.

Mr. D. A. Frank: The trouble with you is that you start out with a certain theory and it makes no difference what the evidence is, your theory is not changed by the facts. Now, you start out here in the first part of this case intimating and charging that 1394 it was the American Telephone & Telegraph Company, the American Telephone Company was getting a big dividend. We have brought a witness here who proves that the average is less than 8%.

Mr. Howard: You had a witness here that states it as his belief, a witness that is not engaged in the work of the Western Electric Company at all, who is not an executive, or even a subordinate officer of it.

Mr. D. A. Frank: He is the very man, though, that is the "watch-dog" of the Treasury. He is the very man that is selected by the American Telephone & Telegraph Company to guard the interests of the associated companies in order to see that the associated companies are not imposed on and discriminated against, and his testimony shows that we are not discriminated against.

Mr. Howard: But he has testified to this, that the Western Electric Company charges for its manufactured products the——

Mr. D. A. Frank (interrupting): That is axiomatic, but he has also testified to the purchase of \$550,000,000.00 worth of property on which there was \$30,000.00 worth of profit, that on the manu- 1395 factured articles less than 8% was being made, that the dividends were on the basis of much less than 8%, the great majority of the dividends were on a six per cent basis.

Mr. Howard: Having it within your power to furnish the best evidence——

Mr. D. A. Frank: We have furnished the best evidence.

Mr. Howard: If you are satisfied that you have discharged that duty, why all right.

Mr. D. A. Frank: We are satisfied that we have gone further than good conscience requires us to go on this proposition.

(By Mr. Duls:)

Q. Mr. Cox, I don't know whether you answered my last question or not. Mr. Howard interrupted your answer I think. The question was this: Is it a fact that the Western Electric Company's manufactured products are sold in competition with the manufactured products of independent companies?

A. Yes, they are.

Q. And there are four or five of such companies in the United States, such independent manufacturing companies?

1396 A. I mentioned three of them, I don't know the others.

Q. Have you testified that approximately half of the business of the Western Electric Company is done by the independent telephone companies purchasing their telephonic apparatus from the Western Electric Company?

A. No, I didn't testify just that. I said that approximately half

was with the Bell Companies, and the other half was with non-Bell Companies. Now, they deal with the other people besides the independent telephone companies, so——

Q. (Interrupting.) Yes, well, at any rate, half of the business that the Western Electric Company has done under its manufacturing organization has been with independent people?

A. Yes.

Q. Purchasing the manufactured articles of the Western Electric Company?

A. That is right.

Q. Now, Mr. Cox, you could go on all day long and detail the savings to the Southwestern Company here from the standards which the Western Electric Company has effected on the different materials that it uses in the plant here in Houston?

A. I could.

Q. For example, you could go on with the items of pencils 1397 and typewriter ribbons and things of that kind and detail indefinitely the savings that would result to the Southwestern Company?

A. I could.

Q. For the Southwestern Company at one time was paying anywhere from 80 cents to \$2.24 a pound for rubber bands and through the Western Electric Company pays 60 cents a pound, as the Western Electric Company saving?

A. It has made a very substantial saving of all costs.

Q. It has saved them right here in Houston?

A. Yes, sir.

Q. And that is true of every item that has gone into the cost of rendering services?

A. It has all along the line.

Q. Everything that is produced here in Houston by the company, that is true?

A. Yes, sir.

(By Mr. Howard:)

Q. Did I understand you to say that half of the business that it did was with the independent companies?

A. Not independent telephone companies, but companies not connected with the Bell System.

Q. Let's find out what you mean by that, other companies, you mean that half of the business of the Western Electric Company is done with telephone companies over which the American Telephone & Telegraph Company have no control?

1398 Mr. D. A. Frank: Answer the question.

A. I will have to modify that statement, I think. I will read my authority for the statement that I gave. This is the Annual Report for 1919 of the American Telephone & Telegraph Company and the exact phrasing is this: The sales of the Western Electric Company incorporated for the year 1919 aggregated \$135,000,000.00 of which

\$70,000,000.00 were to the associated Bell Companies and \$65,000,000.00 were to other companies. I would like for it to go into the record in that form.

Q. Well, is there any difference, do you mean, every company that is not associated with the Bell Company, an independent company?

A. No, I don't.

Q. Then what is the difference, an independent company as you refer to independent companies?

A. An independent company is a company which hasn't got a license from the American Bell Telephone Company. That is the connection which I have been using.

Q. Then the independent companies and the American-Bell Companies, are they—is that exclusive of any other telephone company, does that include all the telephone world?

Judge Powell: Let me see, I believe I have an idea, let me ask a question.

1399 (By Judge Powell:)

Q. The Western Electric Company sells other apparatus than telephone apparatus?

A. They do.

Q. The Western Electric Company sells Hughes' electric ranges to farmers and other things?

A. Yes, sir.

Q. That is what I judged, they probably mean that the whole business was \$135,000,000.00, and that \$70,000,000.00 was to the associated companies?

A. That's the idea.

(By Mr. Howard:)

Q. Now, have you any way of answering what part of the telephone business, manufacture of the telephone equipment the Western Electric Company, what part of that business the American Bell Companies bear to the other?

A. I haven't got those figures.

Judge Powell: There's this statement in the record, I believe there was anyway in recent years, I believe it was '17, the independent companies bought two million dollars worth, and the next year they bought three million dollars worth, with 43% increase. I know that shows, so far as the telephone situation was concerned, very little of it is sold to outsiders. That's in the record.

The Witness: Yes, sir.

1400 Q. But practically all of the telephone equipment used by the Southwestern Telephone Company is purchased from the Western Electric Company?

A. That is right.

Q. And the conditions are such that that is almost of necessity true, isn't it?

A. Physically, yes.

Q. Well, that is what I mean, physically, yes.

A. However, it is obvious that if the law of competition, that if there were great profits in that business, the independent companies would have a much larger share——

Q. (Interrupting.) And aside from being physically true, it is true in this sense that the owner and the powers that control these associated companies and the Southwestern Telephone & Telegraph Company owns also the Western Electric Company?

A. Yes.

Q. That is true?

A. Yes.

Q. So aside from the physical conditions, the motive or self-interest of throwing any profitable business to itself or to one of its companies existed also, doesn't it?

A. The controlling you have there is to get the biggest volume that you can get in order to get the lowest cost and the highest product, the bigger your volume the lower your cost will be.

1401

(By Mr. Duls:)

Q. Now, Mr. Howard has stated that you are in no way connected with the Western Electric Company. You weren't an officer of that company and haven't any connection with it, therefore you are able to judge without any prejudice as to the value of Western Electric Company equipment; how does Western Electric Company equipment rank with equipment manufactured by independent manufacturing concerns, in your judgment?

A. I have always felt and understood that it stood substantially higher. It is obvious that it would, because the requirements that are placed upon the Western Electric Company apparatus are higher than the requirements placed upon independent apparatus. Our service has got to be from coast to coast, universal, whereas the requirement for independent telephone equipment has got to be the community.

Q. Do you consider that the equipment is the best that could be obtained by the Bell Companies?

A. I think there is no question about that.

Q. Now, counsel for the City interrupted you when you started to say something about the profits that are made in the independent apparatus, were you going to say that if the profits were large the independent people would enlarge their plants and go into the business more than they are at present?

1402 A. That is what I was going to say.

(By Mr. Howard:)

Q. The conditions are such that the American Telephone & Telegraph Company has practically the control of the telephone busi-

ness, hasn't it? Three-fourths of it at any rate, and they are gathering in others all the time?

A. I don't understand that the situation, that, the percentage of increase is being enlarged at all by the purchase or absorption of other companies, growth.

Q. In other words, the field of manufacturing telephone articles and products is largely monopolized by the American Telephone & Telegraph Company's subsidiary, the Western Electric Company, isn't it? Anybody who contemplates going into the manufacture of telephone articles at this time must do so confronted with absolute knowledge of the fact that three-fourths of the telephone business is not open to him?

Judge Powell: Is normally open to another company under ordinary conditions.

Q. (continued). And is not open to him and is bound by self-interest to another manufacturing company?

A. He would know that his volume, of course, of the competition was severe.

Q. He would know that it was extraordinarily severe, wouldn't he?

1403 A. He would know that the volume that is going through the Bell manufacturing company, through the Western Electric Company, to be specific, was so great that the cost would be lower for the same item of production.

Q. And the cost of overheads and everything of that kind, figuring the limited field, he would have to figure on extensive overhead costs on a percentage basis, wouldn't he, that is overheads and the general expenses would undoubtedly be high compared with the field that he could reach?

A. Why, if you mean that the Western Electric Company's overhead charges are low, why I agree with you. That the Western Electric Company's overhead charges are low?

Q. No, I didn't ask you about that. I said, if a man would go into the manufacturing, now, with a limited field, knowing that his output, the field for his product would be limited, would be as a prudent business man, or that would strike him, that his overhead would be too high compared with the field that he would reach, wouldn't it?

A. Why, if he isn't in such an extensive business, he wouldn't need to have so much overhead expense.

Q. Well, it is a business that requires considerable overhead expense under the best circumstances, isn't it?

A. Well, it is perfectly possible to sectionalize the field and produce items of great value along specific lines. You have got
1404 great pay station lines that have been used all over the country.

Q. Well, not trying to dodge the issue, hasn't it become the condition in this country and still growing more so that there is one gigantic telephone company that also owns and monopolizes the manufacture of the equipment?

A. To the great advantage of both.

Q. Whether it is to the great advantage of both, that is the condition in America today that the one monopolistic concern controls the operation of telephones and that it also controls almost to a monopolization extent the manufactured articles that go into the enterprises?

A. Well, I think that is substantially correct.

(By Mr. D. A. Frank:)

Q. Mr. Cox, how many stations are there connected with the Bell System in the United States according to your diagram?

A. In the neighborhood of 11,750,000.

Q. And of that number, how many of them are Bell Stations?

A. In the neighborhood of 7,725,000.

Q. So that there are about 4,000,000 stations out of nearly 12,000,000 that are not Bell telephones and still they are connected with the Bell System?

A. That's it.

Q. Then are there any other stations in the United States that are not connected at all with the Bell System?

A. There are entirely independent and unconnected stations.

1405 Q. About how many stations are there?

A. I don't know off-hand.

Q. Do you know whether there are something like two or three million?

A. I should assume that there are at least three million.

Q. So that practically half of the stations in the United States are not Bell stations?

A. I think that the Bell Company stations are a little more than half.

Q. Just a little more than half.

Mr. Howard: He said about four-fifths.

A. Four-fifths of the investment.

Mr. Howard: Well, that is what I mean, four-fifths of the investment.

Mr. D. A. Frank: I am talking about stations.

Mr. Howard: Some of those little things that reach out here, maybe one farm to another, you call those stations. We are talking about investments.

Mr. D. A. Frank: When you are getting at the unit of telephone use in the country.

Mr. Howard: It might be lines or it might be investments, it might be anything you want to call it. We are asking for
1406 investments.

(By Mr. Duls:)

Q. Do you know what it is on the investment basis?

A. Those are pure assumptions. I don't pretend to have the

figures accurate there. I think I made that qualification in the first place.

Q. I want for the record the positive statement from you whether or not you know what the percentage is?

A. I do not.

Mr. Duls: Mr. Howard made the statement yesterday it was four-fifths.

Mr. Howard: Well, he said it and qualified it and said it was his best judgment.

Q. Now, is it your best judgment, were you talking about this map here or plat showing the number of stations in the country?

A. No, I had in mind investments when I assented tentatively to a four-fifths estimate, but I simply don't know.

Mr. Howard: He said that two or three times.

1407 F. M. HOAG, a witness for plaintiff, testified as follows:

Cross-examination.

Questions by Mr. Howard:

Q. Do you know what part of the telephone business in the United States the Bell interests control?

A. I saw the United States wire report some time ago, and if I remember correctly the Bell interests control some four-fifths of the telephone business in the United States.

Q. Overshadows them—a giant in the telephone world, and all the other concerns are pigmies. That is true, isn't it? You understand what I mean?

A. I don't like the way it is stated.

Q. There is nothing wrong about it.

A. They are the biggest telephone people in the world, yes, sir.

Q. Four times as large as all the others put together?

A. Yes, sir, in the United States.

Q. Don't this concern buy all its supplies from the Western Electric Company?

A. I can't answer that.

Q. What is your guess about it? Would you mind guessing on it?

1408 A. I would rather not guess about it.

Q. Isn't it a fact? Don't you understand it to be a fact? You are familiar with their operations, and they buy practically all their equipment from the Western Electric Company?

A. I might explain it a little bit, if I may, in this way: I have stated that the Western Electric Company is the only real big telephone manufacturing plant in the United States—

Q. (Interrupting.) And it is a fact that it has been built up by the Bell system. The Bell system controls the telephone business and the operation of all telephones practically in the United States, and they will buy only from the Western Electric Company, and thereby

all of the competition in the manufacture of switchboards and other telephone equipment is practically stifled?

A. I don't know that.

Q. You don't know that?

A. No, sir, but I do know that the working arrangement which the Bell Telephone Company has with the Western Electric Company makes for great economy and makes for great efficiency in the general handling of our business.

Q. Who told you that? You are associated all the time in telephone environments?

A. Yes, sir.

1409 Q. Live and sleep and breathe with it?

A. Yes, sir.

Q. And eat your meals always with a telephone man, and occupy the same room with a telephone man, and live in a telephone atmosphere?

A. Yes, sir, that is my chief business.

Q. And they tell you what an efficient thing the Western Electric Company is—that is preached to you all of the time?

A. No, sir, far from it.

Q. That is where you get that idea, from associating with and living in this telephone environment. All your views are impregnated—

Mr. D. A. Frank: It seems to me like that is an argument.

A. No, sir, this is where I get it: It is my best judgment, after many years' experience—

Q. The fact is, there are two great concerns. One is the Bell, one branch of the business, and it turns around to the Western Electric Co., its associated company, and says "Here, we will see that you manufacture all the equipment and you sell it to us, and we will set it up as worth so much—

Mr. D. A. Frank: I would like to have you sworn, if you
1410 are going to testify.

A. I think any arrangement which exists between the Bell Telephone Company and the Western Electric Company,—and this is my own judgment, not what somebody else has told me—makes for greater efficiency and economy in the general handling of the telephone business.

Q. Why?

A. In that I have had opportunities many, many times, to compare the jobs which we do, and which the Western Electric Company does, with jobs done by other suppliers, in connection with other telephone companies. I have had that opportunity many, many times.

Q. But there is really no other telephone company that amounts to anything in the United States, aside from the Bell.

A. Yes, sir, there are some pretty sizeable telephone companies in the State of Texas.

Q. Some of those you bought out the other day?

A. No, sir. The Texas Telephone Company at Waco; that is a good, big concern. The Gulf States is a big concern.

Q. The fact is, you can't buy this stuff at any other place than the Western Electric Company?

A. Not to advantage, no, sir.

Q. And you don't know whether they are associated companies, or not?

A. I don't know what?

1411 C. A. GATES, a witness for plaintiff, testified as follows:

Cross-examination.

Questions by Mr. Howard:

Q. You are Vice-President of this Company and its General Manager,—what relationship is there between this company and the Western Electric Company?

A. In what way, Mr. Howard?

Q. Well, in any way?

A. Why, we have a working arrangement with them whereby we buy our material from them under certain conditions, at a certain price, which is materially less than we could buy it in open market.

Q. You have a contract whereby you buy all of your material from them that they can furnish?

A. Not necessarily all of it, we are not confined to their market.

Q. You have a contract whereby you buy all of your material from them that they can furnish?

A. Not necessarily all of it, we are not confined to their market.

Q. Well, in regard to the ownership of the two companies, who—can you tell me anything about that?

A. I know that the American Telephone and Telegraph Company own some of the stock of the Western Electric Company.

Q. It owns the majority of the stock—the controlling interest, doesn't it?

A. I understand they do, I don't know that to be a fact.

Q. That is your understanding?

A. That is my understanding; but I don't know that.

Q. And it owns practically all the stock in the Southwestern Telegraph and Telephone Company?

A. Yes, they own the majority of the stock in the Southwestern Telegraph and Telephone Company.

Q. That is all.

Redirect examination.

Questions by Mr. J. D. Frank:

Q. What is the next item of material on Page 1 under summary of appraisal?

A. Central Office Equipment.

Q. How much have you included there as the cost of reproducing that part of the property?

A. \$1,242,514.00.

Q. How did you go about appraising that particular part of the property, Mr. Gates?

A. I asked the Western Electric Company, who manufactured that apparatus, to make me a price on re-producing that property.

1413 Q. Did they have a list of the property—that is, with reference to the quantity of the property?

A. An inventory was sent them and they made their estimate on that statement.

Q. Did you ask any other manufacturing company to make an estimate on what it would cost to reproduce that part of the plant?

A. I did not.

Q. Why didn't you?

A. Because there is no other company that I know of that manufactures the same class or character of equipment, or that could replace that equipment.

Mr. J. D. Frank: I believe that is all, on that item, Mr. Howard.

Recross-examination.

Questions by Mr. Howard:

Q. You say you got these figures from the Western Electric Company, too?

A. Yes, sir. On page 81 is a copy of their proposition.

Q. They have a monopoly in the manufacture of this kind of equipment, I understand you to say?

A. They are the only people who manufacture that particular equipment.

1414 Q. Did you ever—you made a very nice analysis of the directory this morning—did you ever analyze the labor cost of the Central Office equipment?

A. Yes, but not recently.

Q. Not recently? You do not know what part or what proportion the labor of that manufacture bears to the selling part?

A. No, I didn't. You mean the cost of manufacture?

Q. Yes, the cost of the manufacture bears to the selling cost of the product?

A. No, I didn't; but it perhaps runs from 60 to 70.

Q. You are guessing at that, Mr. Gates?

A. I am using these figures I have in my mind in days gone by. That is not positive, absolutely certain.

Q. They have increased considerably in later years, the prices of equipment?

A. Yes, sir, they have increased considerably in later years.

Q. That is all.

1415 Mr. Howard: Now, I put these gentlemen upon notice that this thing is going to come up and it should come up, that the

Western Electric Company that they own and use here as an instrumentality to absorb profits from this community should come into this court and make a clean showing of what it cost them to deliver this equipment to these people here who are paying this return, and until they do that, they are not in a court of equity entitled to have this extraordinary relief which they are asking to have the functioning of a rate-making body suspended. Now, those are things that I contend we must go into and we can't segregate this exchange entirely from this other business of the Southwestern and just pin them down here and say we are going to give you the privileges of losing from these local tolls, these subscribers pay, and we are going to burden you with all these allocated charges of supervision of toll lines, and we are going to, in consideration of all these expenses that you are put in handling these long distance tolls, which we have not undertaken to set up and segregate and specify and throw you 25% of Four Hundred Thousand Dollars of tolls that originate here.

1416 We are contending that when you get right down to the real facts of this case and get down to learn what they are making, and what money they are getting, from this exchange here, which the people of this community are instrumental in making and originating for them, that we have got to consider this company as a whole, and that we have got to consider these indirect methods of revenue as well as these direct methods of subscribers' payments. Of course, I know it is the easy way, it is a nice thing to just accept those things and not look behind them, but I don't think that in a court of equity where they are asking for this relief, that they can hold back these indirect charges and these indirect profits and say you can't inquire into them.

1417 Direct examination.

Questions by Mr. Howard:

Q. Mr. Kelsey, I would like for you to take that (Counsel hands witness the Hoag inventory) and see if you can turn to the central office equipment.

A. I have it here.

Q. What is listed there, Mr. Kelsey, under the head of central office equipment?

A. Preston, Capitol, Hadley and Taylor; other equipment and construction work and progress.

Q. How is that, Mr. Kelsey?

A. Other equipment and construction work and progress.

Q. Do you find the central office switch board there?

A. Well, there is a lot of them; there is Hadley, Taylor—

Q. (Interrupting.) Central office, Preston?

A. Yes, here it is.

Q. Mr. Kelsey, here is also Mr. Hoag's appraisal as applied to that inventory. I wish you would take up there the items relating, first, to the Preston office equipment, and they call here the central

office equipment. First, turning to the inventory, what do you find there?

A. Twenty-three sections of eight panel three position subscribers' switch board, eighty-eight multiple and ten thousand answering jacks; seven sections of seven panel key position trunks——

Q. (Interrupting.) Can you find the appraisal,—the amount where that is appraised?

A. I don't know. I can probably get it here. Yes, it is Preston, \$752,895.00.

1418 Q. How much?

A. \$752,895.00.

Q. What does that cover?

A. Covers the main board and the trunk board and frames and other——

A. (Interrupting.) He doesn't undertake to price the boards separately, does he?

A. Well, yes, he has just the "A" and "B" board here, information desk, Chief Operator's desk——

Q. (Interrupting.) Can you from that inventory get in your mind the article that he is appraising, and do you know about what it is?

A. Yes.

Q. You are familiar with it?

A. Yes.

Q. Take that board in the Preston office, what kind of a board does he say it was?

A. Twenty-three sections, 8,800 subscribers' multiples, 10,000 answering jacks.

Q. How much is that board appraised at?

A. \$752,000.00.

Q. Mr. Kelsey, do you know—have you had any experience in the manufacture of telephone office equipment?

A. I have.

Q. Were you ever engaged in that business?

A. Yes.

Q. Where?

A. With the Kellogg Switch Board & Supply Company, and they manufactured equipment, much larger boards than these.

1419 Q. Mr. Kelsey, I haven't had any opportunity to go over these matters with you, and am just trying now to see if you can take up from these inventories and appraisals, the amount put in here that this Company would have to have in order to earn a return and compare them with the manufacturing prices as nearly as you can, that is, approximately; are you able to do that?

Mr. D. A. Frank: I would like to know the relevancy of that, your Honor.

Mr. Howard: Here is the idea, our contention is that this American Tel. & Tel. Company owns both of these companies, that it is carrying on these two branches and that in tracing the earnings, as to whether the property is being confiscated—the question of whether

or not upon the whole enterprise they are being denied a fair return. If they have indirect charges and if they are realizing and taking profits from the manufacturer on office equipment and are placing it in this exchange here and drawing a return upon it, why, it has a direct bearing upon the earnings of the Company; in other words, it would be an indirect earning, and where one concern undertakes to go into this business of manufacturing the equipment for an exchange, all that it would be entitled to is a fair and legitimate return upon its investment so invested in the manufacturing branch, and they can not conduct the manufacturing branch and put in this property at huge profits.

Mr. D. A. Frank: Mr. Kelsey has not examined the switch board and wouldn't pass an opinion, or as an honest man sit here and make an estimate,—as a careful, prudent man, I will leave out the word honest—Mr. Kelsey wouldn't undertake nor would anybody else, undertake to sit here and answer a question as to what a switch board would cost that he had never seen, and it looks to me like purely a waste of time, and besides, the testimony is entirely irrelevant. Go ahead, and if Mr. Kelsey knows anything let him tell it.

Q. All right, Mr. Kelsey. Will you read back the question?

(The question last above asked the witness was read by the reporter.)

A. Approximately, yes.

Q. Mr. Kelsey, are you reasonably familiar with the cost of manufacturing at the present time of a switch board on practically the same specifications as the switch board now in use in the Preston office exchange?

A. Well, you see this specification here is not submitted to any competition at all; it is put in and priced at the regular price.

Q. But are you or not able, from your knowledge of the material and the labor and the cost of manufacturing switch boards of this size and for this purpose, serving this purpose, to approximate what a board of that kind should reasonably cost to manufacture?

A. Yes, sir; \$752,000.00 is a very high price. That "A" board, under ordinary conditions, shouldn't run over \$40.00 a line.

Q. Shouldn't run over \$40.00 a what?

A. A line,—8,800 lines.

Q. Well, that don't indicate to me anything,—\$40.00 a line.

A. Well, for a board of 8,800 lines at \$40.00 a line would be very near \$360,000.00.

Q. \$360,000.00?

A. Yes, sir.

Q. Are you speaking about the selling price or manufacturing price?

A. That's what I say, the manufacturing price.

Q. You are speaking of the manufacturing price then, around \$360,000.00—

A. (Interrupting.) That's what it would cost some company to buy their board.

Q. In other words, that is the retail price or purchase price?

A. Yes, sir. Now, here is a trunk board here that has got to come into this.

Q. How is that?

A. You use a trunk board in addition to that, and that will have to be priced in addition to that.

Q. Is that, or not, included in the \$752,000.00?

A. No, but \$450,000.00 in competition would equip this plant here.

Q. \$450,000.00?

A. This main office, that is, would equip the Preston office under competitive conditions.

Q. You mean present day prices at the present time?

A. Yes.

The Master: You mean to say now that on this Hoag inventory, that he puts the present value of this stuff in at \$752,000.00, and that he can buy it in the open market for \$450,000.00.

A. Yes, he could, Judge, and for less. They have, of course, a great many things in here that would be special with an independent manufacturer, but I believe any independent manufacturer 1422 in this country would be glad to take the Preston order, as it stands, for \$450,000.00.

Mr. D. A. Frank: Have you ever seen it?

A. Oh, there are many boards like it. No, I haven't seen it.

(By Mr. Howard:)

Q. Does that embrace all the Preston office equipment?

A. The frame work and everything, yes. There was a time when we used to figure a switch board of this kind around \$30.00 a line.

Q. Now, selling it at this price that you suggest,—you say \$450,000.00 as distinguished from,—how much set up there?

A. \$752,000.00.

Q. That would include to the manufacturer, as I understand you, a good and reasonable profit?

A. A profit of 20%; it is supposed that most manufacturers make 20% profit,—the Kellogg Company did.

Q. Would the price you have named, of \$450,000.00, include a reasonable profit of 20% to the manufacturer?

A. It would. There is nothing mysterious about these boards. If this was in competition it would be entirely different, but this board is simply made up and sent down and run through on the basis that the Western Electric Company gets a certain profit. The Western Electric Company has always been one of the most profitable businesses in the world, one of the very best ones.

Q. Do you know the reasonable amount of material that goes into a board of this kind?

A. Every bit of it. I think I ought to know all about it, as I put in a eighteen-thousand line board of the same character 1423 in Cleveland.

Q. And is there any superior merit or benefit in using

this particular Western Electric board that they have talked about being standardized?

A. This is a three-wire system and it isn't necessarily a superior board. It is a good board. It is as good as human ingenuity can make it, as any man with good engineering and good sense can make it, but they all have the same staple materials, mahogany, German silver and rubber.

Q. You have kept yourself conversant and familiar with the prices affecting the manufacture of switch boards—

Mr. D. A. Frank: Don't lead him always.

A. In appraising property I have had, of course, to keep up with that, and in my capacity as Sales Manager of the Kellogg Switch Board and Supply Company I have had to put over one of these large boards in competition with the Western Electric Company, when they came into the field with a great blare of trumpets and didn't succeed—

Q. (Interrupting.) Now, turn to the next matter of office equipment set up in the inventory, Mr. Kelsey, and what do you find?

A. Capitol, twenty-eight hundred lines.

Q. How much?

A. Capitol—no, there is a Capitol unit in here but it don't seem to follow under this summary. The next one is the Hadley unit,—the Hadley unit is sixty-six hundred—

The Master (interrupting): Before you pass over central office equipment, have you got a set up here in which they show 1424 the total of what is over there?

A. I haven't gone into that at all.

The Master: You haven't taken the specific articles that they list as being there and compared their set up price?

A. Oh, yes, where they detail all of them.

The Master: Have you inspected the inventory of what they have got that they have put this value on?

A. No.

The Master: You haven't compared the prices that they have put on that in reaching this \$752,000.00?

A. Not in detail, because in general telephone practice you first want to know how many lines a switchboard has. A thousand-line board would be worth \$10.00 a line; a two-thousand line board used to run \$11.50 a line; a three-thousand line board used to run \$13.00 a line, and they would increase a dollar and a half a line per thousand lines in a board; this you could follow almost as a mathematical rule, and we never went into all of these details and worked up the information. We did not go into all of these matters and say so many jacks, so many lamps, and so many of all these different items. Of course, this is all right if I had the time to approach it, but I would only want to know about the number of lines, and then, of course, I know that each line has so many relays and so many jacks, and so many line circuits, and with a eight-thousand line circuit, at \$18.00 per line, you would get a pretty

1425 near correct estimate of the cost the circuits used to run about \$18.00 a line.

(By Mr. Howard:)

Q. You mean when you get the number of lines and a general idea of the switch board, you decide by the number of lines, that is, a man familiar with the manufacture of a switch board?

A. Yes.

Q. He knows from long experience when he gets this information without detailing every little item, he knows what the price should be?

A. I figured that in these other boards, in Philadelphia, St. Louis and Cleveland; our Company was one of the most successful financial companies in the country.

Q. And in order to bid on a board, a contract, for manufacturing it, do you go over each item and list it?

A. No, that is the most absurd thing in the world. You simply make up your general specifications, so many lines and so many trunk circuits.

Q. And having this information in a general way he can make a very intelligent bid and approximation?

A. They have surrounded this with considerable mystery and detail.

Q. To a man familiar with these things, that's been in the game, the details are not mysterious to any extent, are they?

A. No.

Q. You do not have to take up every little thing and say that they are so many of this and so many of that and then total them up in order to get the reasonable value of the article you are bidding on?

A. No, certainly not, not by any means.

1426 Q. Now, you would know from the number of lines how many jacks you would have to have?

A. Yes.

Q. And you know from experience about the cost of these things, about what they will cost,—what all the equipment will cost,—all the equipment that goes with a board of that magnitude?

A. Yes, this inventory is absolutely absurd.

Q. Would it help you to any appreciable degree to go up there and look at the board and watch the girls operate it?

A. Why, no.

Q. Would that help you any, to go up and look it over?

A. No, what's the use in that. We have put in boards at Bahia, India, and Odessa, Russia, and do all the engineering here at home.

Q. Any expert telephone man knows what a board is?

A. We wouldn't hold out jobs very long if we didn't. We have put in boards in China and all over the world and *and* never had to look at them; they send us the floor plan, and that's about all we ever have.

Q. Wouldn't that rule hold true in regard to most of the things

set up in the inventory, and any practical man could estimate the value without detailing all of the different items?

A. Everything that a telephone company uses is a simple, separate, concise, composite and staple thing,—there is nothing mysterious about it.

Q. What did you say you couldn't get, the Capitol? Isn't the equipment listed?

A. It says Capitol unit here, ten sections of eight panel, three position subscribers switch board, equipped with 8,800 subscribers multiple per section and 4,540 answering jacks; that doesn't appear in the summary at all. That's on page 69. We have Preston, then Preston again. It must mean that is Capitol,—that's a misprint. On page 69 you see you refer there—it seems the Capitol unit is included in the Preston exchange. It is included in with the Preston. That's pretty near a five-thousand line board, and that would make about \$600,000.00 for that office as against \$752,000.00.

Q. How about the Hadley?

A. The Hadley is a 6,700 line board, priced at \$230,000.00.

Q. What would that board manufacture for to-day?

A. I think that contract would be gladly taken at, let me see,—\$30.00 a line. That would be about \$2,000,000.00.

Q. How much do they put that in at?

A. \$230,000.00.

Q. What other?

A. Taylor, a 3,500 line board. That's in here at \$101,000.00. That board would run about \$87,500.00 against their \$100,942.00.

Q. Now, when you speak of these things, I understand that you are speaking of the manufacturing cost, plus the manufacturer's profit.

A. Yes?

Q. And what an independent company would be glad to do the work for?

A. The same price, yes, sir.

Q. And you say there is at least 20% profit in them at that?

A. Our Company always made 20% profit, and so has the Western Electric Company, or more.

Q. When you speak of profit, what do you mean?

A. A net profit on your gross sales of 20%. It is a poor manufacturing business that don't result in 20% on your gross sales.

1428 Q. Does that bear any relation to the capital invested in the business?

A. No, it doesn't at all. When we were capitalized at half a million dollars we made 20% on our gross sales; that's the only way we looked at it, we never had any reference to the capital at that time.

Q. What other equipment, as set up in that inventory, is furnished by the Western Electric Company?

A. They have them all in there, I imagine. The central office equipment, that's in there, and current things, subject to all of these contingencies and omissions, engineering expense, general expense,

taxes during construction. When that is built, contracted to be put in here and installed, I don't think that it is subject to the same treatment that the rest of the plant is; that apparatus is put in under a contract-fixed prices and—

Q. (Interrupting.) But all of these charges, for instance, Preston central office, they are all included in the \$750,000.00?

A. They have got other charges in there; 3%, contingencies and omissions, engineering expense—

Q. (Interrupting.) Over and above the \$750,000.00?

A. Yes.

Q. How much will that amount to?

A. Well, that is the total of all of them, but then this board—contingencies and omissions, \$139,667.00; engineering expense, \$191,000.00; general expense, \$99,741.00. You can easily conceive the engineering expense in your distributing system because it is built by the people here.

Q. But all that is included in the total of \$752,000.00?

A. No, they are all added to that.

1429 Q. As I understand you, then, in this comparison which you have just made, where you say the Preston, which includes also the Capitol, would amount to around \$600,000.00?

A. Yes.

Q. By that you mean that by an independent company it would reasonably cost to manufacture, plus the manufacturer's profit, \$600,000.00 as compared to \$752,000.00?

A. Yes.

Q. And that the Company has added to that a lot of engineering and contingency charges?

A. Yes, they added that in addition when that is a contract proposition.

Q. Now, your figure of \$600,000.00, that's a contract proposition, and that includes contingencies and omissions and engineering?

A. To install that board, set up in active operation, fully tested out and up to specifications. You can't subject all these switch boards and instruments to the same thing that you do all other construction.

Q. After they add that to the \$752,000.00, what figure do they get on the central office equipment?

A. They add 3%, that's about \$22,500.00; 4%, which is \$30,000.00, and 3%. In other words, they add 50% before they get done with it,—add 50% to that switch board price.

Q. Which would make a total of about how much on that?

A. Well, that would run that up to almost a million dollars alone.

Q. As distinguished from \$600,000.00?

A. Yes, sir.

Q. As the reasonable cost of installing it?

A. Yes.

1430 Q. Now, Mr. Kelsey, just touch briefly on overheads, omissions, and contingencies and that sort of thing. Manufacturers of telephone equipment, where there is competition, will in-

stall that under a guarantee, put it up and test it out and eliminate any necessity for contingencies, omissions and supervision?

A. Always have done that.

Q. And the prices you spoke of a while ago include all of these things?

A. Everything.

Q. That same thing runs through all the other exchanges, does it not, and about the same percentage?

A. Yes, it does. Another thing in connection with these switch boards, the Western Electric Company know just what will be required next year, and the boards that will be required next year are scheduled this year, while those in open competition never knew where the next board was coming from. The Western Electric Company has that advantage and they can schedule them for the next five years if they want to.

Q. It is a fact that the American Telephone & Telegraph Company controls four-fifths of the wires in the United States, and lets out and purchases all equipment from the Western Electric Company, thereby narrowing the field to independent manufacturers? Does that tend in any way to make the manufacturing cost by independent people more expensive?

A. Yes, it does. They have the market constantly restricted and kept down by the Bell Company.

Q. They have to maintain the same overheads in order to draw trade and revenue from a very restricted field?

A. We had to extend the field and go out and find a new field. When people who are in competition have to work for a living and lose business that way, they have to go to other fields to look for it, and all independent manufacturers had this problem before them, and instead of growing, they have been mighty lucky to keep even.

Q. And that tends to finally eliminate the independent companies altogether?

A. Yes, sir, absolutely.

Q. And, of course, when all competition is eliminated and there is no basis of competition at all as it is making now, at the present time even under advantageous circumstances—are they able to manufacture all of the equipment?

A. Oh! yes, I think the Kellogg Switch Board & Supply Company can build anything as well as the Western Electric Company can, not in such large quantities, however, as naturally their business is restricted and they don't have the same floor space and machinery, but they have got just as good quality machinery and can make anything according to specifications.

Q. How about the conduits and wires used by the companies. Are they furnished by the Western Electric Company?

A. The Western Electric Company furnishes the cable,—they have always got that.

Q. Can you—

A. (Interrupting.) They have distributing system here, \$2,488,660.00.

Q. Are you familiar with that branch of the telephone business, the manufacturing of it?

A. I had charge of a good many construction plants and plans in the past.

Q. At the present time you are not engaged in that?

A. No, we only handle wire. In the last few years there 1432 have been no independent plants.

Q. You are engaged at the present time in the manufacture of central office equipment?

A. Well, no, not in such large sizes. We make some private boards, common battery boards, small boards, but we principally handle parts, hunt parts for people and make a specialty of having something on hand that nobody else has.

Q. Now, the aerial wire, do you find that in the inventory?

A. What is that you ask for?

Q. Aerial wire.

A. What is the question about the wire?

Q. Well, do you find it inventoried?

A. Inventoried, yes.

Q. Well, do you find the appraisal of it, the amount set up?

A. Yes, it is over here. He has wire here about \$51,000.00,—no, the total, I think is \$75,572.00.

Q. You know who that wire is manufactured by?

A. Why different people pull wire. The American Steel & Roll Company and I imagine the Western Electric have a wire pulling plant of their own. I have paid no attention to that wire outside of buying all wire from the American Press Company, the Ansonia Press and the Western Electric Company.

Q. Do you know anything about the prices of wire?

A. I haven't paid any attention to wire prices for a while. It is down a little bit.

Q. You are not familiar with the prices of conduit?

A. Yes, conduit.

Q. Who manufacturers underground conduit?

1433 A. Why, we used to get a great deal of duct from Brazil, Indiana. I have forgotten the name of the manufacturer who furnished it, and the American Tile & Duct Company. They were one of our advertisers too, but I have forgotten the name, but they have duct here, two duct trench, \$1.46 a foot in place. It used to be that way—they put in the entire duct system in Buffalo in 1900 at 18 cents a foot, and in 1906 our total cost per duct foot was about 26 cents, and now, here you have two duct trench here, \$1.46 a foot. That would be about 72 and that is quite an increase for one duct it would be 71.

Q. As compared with—

A. (Interrupting.) As against the old price of putting it in.

Q. Are you familiar with the prices in later years?

A. No, but, of course, they have gotten higher in the last few years. At the time the inventory of the plant was taken in 1914 there had been no change in the prices; they have only been changed since that time.

Q. But what part of the property that goes into the equipment, that goes into a telephone plant is manufactured by the Western Electric Company is distinguished from that which it gets as a Jobber?

A. Oh! furniture, fixtures, washing machines,—they supply everything under the sun.

Q. What part of the telephone property and material, that is used in a telephone exchange is manufactured directly by the Western Electric Company?

A. All switch boards, telephones and cables.

Q. Can you tell anything about the relative proportion in value that the articles manufactured by the Western Electric Company bear to the entire property of an exchange?

A. Well, easily one-half. The way they have switch board prices in here now it would run much more than half,—at least half and all of it would be purchased from the Western Electric Company. They are the greatest warehouse in the world and ought to be able, with their equipment, to build the cheapest plant in the world; they ought to come into a plane like this and build a plant quicker than any company in the world.

Q. Do they do it?

A. They haven't done it. They have given us the benefit of the highest prices—I tell you that the Western Electric Company is the most powerful institution of the kind in the world and they ought to undersell everybody.

Q. But from comparisons you made on central office equipment and added charges there, as reduced to percentages, it is about an 80% increase over the reasonable value?

Mr. D. A. Frank: Why not ask him what per cent?

A. They have added about,—let's see,—we are around four million, the city, and this appraisal shows six million and a half; that would be about 40% more, wouldn't it,—yes.

(By Mr. Howard:)

Q. Would that include their supervision?

A. They have everything in here. They have cost of establishing business, working capital, interest during construction, every possible item is in here. The original plant itself shows about four and a half million, and by the time they get done loading it they have six million.

Q. I am talking about central office equipment. You stated you put that in for \$600,000.00?

1435 A. Well, they would add about 20%.

Q. And then a lot of added overcharge?

A. Well, added charges; it's in there in big type.

Q. And you stated a while ago that it would run up over a million dollars?

A. Yes, its added 50% indirect to the direct.

Q. I want you to make the calculation for Mr. Frank. You stated

awhile ago, I believe, that the central office equipment was reasonable worth to manufacture, plus the manufacturer's profit, \$6,000,000.00?

A. \$600,000.00.

Q. But as set up here in the inventory, after adding all these loading charges, it runs up over a million dollars, and I want to know this for Mr. Frank's benefit, what increase \$1,000,000.00 is over \$600,000.00 in percentage?

A. About 48%.

Q. Well, it is more than that on these figures. Just figure it out what per cent 600,000 is—what increase 1,000,000 is over 600,000.

A. It runs over to \$1,027,000.00.

Q. Well, what increase would that be over \$600,000.00 in per cent?

A. Well, of course, it practically doubles it.

Q. Now, that would hold practically the same per cent upon all the material manufactured by the Western Electric Company and sold to the operating exchanges.

A. It would. There is no check or no restraint,—they make the prices; there are no salesman required and no competition.

Q. They buy from one company,—one company owns both companies?

A. There is no limit to the extravagance and they may wreck it; they have no limit and no restraining hand to hold them and they spare no expense.

Q. Do you know anything about the earnings of the Western Electric Company, Mr. Kelsey?

A. It has been one of the most profitable concerns in the whole world.

Q. Do you know of any substantial amounts in the gross value of the stock?

A. I don't think that any company in the world has paid the stock dividends and has the amount of earnings. I know of a stockholder, the Kellogg family,—they sold something like \$800,000.00 worth of stock which originally cost Mr. Kellogg, the father, in the '70's—the family got \$200.00 for every dollar that he put into the Western Electric.

Q. And they made it out of the profits of manufacture?

A. Oh! absolutely telephone manufacture.

Mr. D. A. Frank: A \$4,000.00 investment brought \$800,000.00?

A. Yes, sir.

(By Mr. Howard:)

Q. In what time?

A. Oh! in the '70's, and it was in 1912 when the family finally made the trade. The Western Electric Company was organized before the fire, and during the fire Mr. Kellogg moved the books himself to the new establishment; that was in '76, I think. He had this \$4,000.00 and put it up as a loan to the Company on the condition that he keep his job as bookkeeper at \$12.00 a week. Oh! this is some of the history of the concern which is very interesting.

Q. And it is still earning enormous profits?

A. Well, it has accumulated enormous profits and they have a policy of charging everything up to the poor stock investor to help get his little 8% and it doesn't matter what the earnings are; in other words, I think it is one of the coldest blooded propositions that we have had in history.

1438 J. C. KELSEY, a witness for the defendant, testified as follows:

Cross-examination.

Questions by Mr. D. A. Frank:

Q. Would it surprise you to know, Mr. Kelsey, that in the City of Houston, they are handling an average of over a thousand?

A. They are not.

Q. Are you swearing now, or just guessing?

A. I am swearing, because from the records I have seen there, you run about five hundred calls.

Q. Your idea is, that a plant that looses money for twenty-five years is worth more than one that has made money?

A. Under the law it is, yes; because one can capitalize its deficit and get a higher rate really than a successful company can.

Q. Now, I want to call you- attention, Mr. Kelsey, to the fact that you are swearing.

A. I understand I am under oath, absolutely under oath, and I have every respect for this Court. I am telling exactly what is what.

Q. That there's more toll operators than there are local operators.

A. That can be proved.

Q. But are you swearing now? You testify under oath?

A. Yes, I am glad you mentioned all of that, because I overlooked it.

Q. You are testifying under oath that there are more toll operators and more expense than local?

A. You have got a tremendous traffic load in this town.

1439 Q. You don't know? Why was it?

A. Because I know it.

Q. You realize that you are under oath, don't you, Mr. Kelsey?

A. You bet! I have realized that from the time I hit this town.

Q. You swore this morning positively that we had more toll operators than exchange operators?

A. No, I gave it as my opinion that it cost you more to operate your toll lines than your local exchange.

Q. I ask you, on your oath, on this stand, whether you would have cut out this 4½% if you could have arrived at your 7.7% any other way?

A. I didn't have anything to do with it. I never figured ahead in my life, and never will.

Q. The testimony in the case shows that the 4½% agreement was entered into at a time when the Southwestern Company was entirely independent of the American Telephone & Telegraph Company.

A. I think that is the silliest arrangement. I can't imagine an institution that ought to be as intelligent as the American Tel. & Tel. Company which will continue to proceed with the 4½% clause,—it causes more trouble and more expense fighting for the fool thing,—you have got orders to fight for the 4½% more than anything else, and everything else is to be thrown overboard, but sustain the 4½%.

Q. Who gave me the orders?

A. I don't know.

Q. You are swearing——

A. (Interrupting.) Yes, I am swearing, and I am perfectly satisfied and tell this Court, whole-hearted, that your principal duty in this case is to sustain the 4½%.

1440 Q. Well, from whom did I get the orders?

A. I don't know.

Q. What makes you think I have such orders as that, Mr. Kelsey?

A. Because that is considered of more importance than some of the——

Q. (Interrupting.) Suppose I told you there wasn't a word of truth in it?

A. In other words, I am a liar?

Q. Call yourself what you please, but there isn't a word of truth in what you said. I am under no orders.

A. Well, may be——

Mr. Howard: Are you testifying, Mr. Frank? As long as you have raised that issue, I would like to have you take the stand and let me question you about it.

Q. There was no reconstruction figure and I told you.

A. No sir, you said that year was unusually good, but the year before you did quite a lot more. If you will show this Court, if you are fair enough and frank enough to show your absolute record of reconstruction since 1898, I will abide by anything you find.

Q. Why 1898?

A. Because you start in with the common battery system and commence to put on the airs you have today.

Q. Can't you be honest enough——

A. (Interrupting.) I want you to be honest enough to give this Court the record since 1898.

Q. We are working on 1919.

A. I am working from 1898 up to now.

Q. You have used a figure that I told you was wrong.

1441 A. I asked you for all the figures and you seem to be afraid to show what happened in the last twenty years,—your experience here.

Q. Mr. Kelsey, what difference does it make what we spent twenty years ago?

A. I want to know what your maintenance was, how big you were, and then you have something to tell the Court. You can't tell the Court you spent all your reconstruction in three years. That has to be amortized and covered over a period of years.

Q. How much City taxes did we pay the City of Houston on the toll investment of \$808,000.00?

A. I don't suppose you paid any.

Q. You say it is in there, I wanted to know how much is in there?

A. Because it is bound to be in there. You have got one sixth of your property. I am talking about the load that your company carried in this town. This maintenance load is something that you charged here——

Q. (Interrupting.) Do you realize that you are under oath and that you are swearing?

A. Yes, you bet. You have never let me forget that for a minute. You have kept me out of trouble all during this case.

Q. And still you say that no taxes ought to be allowed on the \$808,000.00?

A. It is allowed and it is in there, Mr. Frank.

Q. Are you on our pay roll?

A. Mr. Frank, sometimes you wander off in fields afar and I can not follow you.

Q. Where did Allison ever testify for us except in the Houston case?

A. My goodness alive!——

1442 Q. You are under oath.

A. I can show you that Allison and Sloan, and half a dozen of those engineers have been given business by your concern all the time. Their leanings are with you, and I would like to have them here to tell them.

Q. Where did he ever testify except at Houston?

A. I don't know.

Q. You said he was always for us?

A. That is tradition. We know that.

Q. Are you swearing to tradition in this Court?

A. We know we wouldn't select Allison if we were in a municipal case.

Q. When did he ever say that?

A. I have talked to him. He is a very estimable gentleman, but he is all Bell.

Q. He is not the kind of man you could get to get on a side and testify at so much a day on that side?

A. What side are you talking about? Are you intimating that I am testifying——

Q. (Interrupting.) I am not intimating anything at all, I am not that kind of a man.

A. For six days I have heard a lot that you have said, and I want to know——

The Master: He is referring to Mr. Allison.

A. Sometimes he is so much higher intellectually than I am that I have to grope for an answer.

1443

Revenues and Expenses.

A. E. SCOTT, resumed the stand and further testified as follows:

Direct examination.

Questions by Mr. J. D. Frank:

Q. Mr. Scott, yesterday afternoon I believe we had just introduced as Exhibit No. 44, a statement of the revenues and expenses for the month ended December 31, 1919, hadn't we?

A. Yes, sir.

Q. Now, without going into details on that, what does that show the results to be?

A. It shows that the balance of net income before making any allowance for depreciation for these four months—these are the months when the lower rates were in effect again—that we lost \$16,601.39; that is before taking into account any question or valuation or any question of depreciation.

Q. That is, your operating expenses were actually \$16,601.39 in excess of the revenue which you derived from the operation of the exchange, without setting aside anything as a reserve for depreciation?

A. Yes, sir—that is four months on an annual basis, that 1444 is about \$50,000.00.

Q. Now, have you prepared an estimate of what the net loss would have been for the four months ended December 31st, 1919 if the increased rates which were established for February 1st, 1919 had continued in effect?

A. Yes, sir. (Handing paper to counsel.)

Mr. J. D. Frank: We offer that in evidence as plaintiff's exhibit No. 45.

(Plaintiff's Exhibit No. 45 was received in evidence and is in words and figures as follows:

PLAINTIFF'S EXHIBIT No. 45.

A. E. Scott, Witness.

The Southwestern Telegraph and Telephone Company.

Houston, Texas.

Estimate of What the Net Loss Would Have Been for Four Months Ended Dec. 31, 1919, if the Rates Established on February 1, 1919, Had Continued in Effect.

Annual basis.

Total Exchange Service Revenues for seven months ended August 31, 1919.....	\$961,650.60	
Average Company owned Stations for the 7 months=	$\$961,650.60 \div 25,969 = \37.03	Annual Revenue per Station.
1445 Average Company owned Stations for the 4 months=	$27,031 \times \$37.03 =$	
27,031 Stations=Annual Exchange Service Revenue for the 4 months ended Dec. 31, 1919, under the increased rates		\$1,000,958
Toll Service Revenues for the four months		129,008
Miscellaneous " " " " "		24,598
Total Revenues		<u>\$1,154,564</u>

Expenses for the four months:

Maintenance Expenses	\$156,174	
Traffic Expenses	490,037	
Commercial Expenses	87,959	
General Expenses	54,072	
Rights, Privileges, etc.	39,108	
Uncollectibles	14,196	
Taxes	134,674	
Rent Deductions	3,842	
Total Expenses		<u>\$980,062</u>

Balance Net Income before deducting depreciation ..	\$174,502
Depreciation	<u>\$359,999</u>

Balance Net Loss based on Exchange Rates in effect during the 7 months ended August 31 1919, and actual Toll and Miscellaneous Revenues and Expenses for the four months ended Dec. 31, 1919	<u>*\$185,497</u>
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*Red in copy.

(Mr. J. D. Frank, resuming:)

Q. What does this exhibit show with reference to what the result would have been for the month ended December 31st, 1919, if the increased rates had been permitted to remain in effect?

A. We would have lost \$185,497.00.

Q. Now, have you made due allowance for the fact that during those four months that the decreased rates were in effect you gained certain subscribers?

A. Yes, sir, I have taken that in consideration in this calculation; the way I have done that was to go to the seven months during which we had the higher rates in effect and find out what the average revenue per station was on the number of stations we had during those seven months; then I found out what the average number of stations were during the four months, and applied this higher rate which was in effect during the seven months to the average stations during the four months to obtain my exchange revenue.

Q. Now, have you prepared an exhibit containing a summary of the property and net loss on the annual business?

1447 A. Yes, sir, I have.

Q. Give me copies of that?

A. Yes, sir. (The witness handed papers to counsel.)

Mr. J. D. Frank: We desire to offer that in evidence as plaintiff's Exhibit No. 46.

(The paper was thereupon received in evidence, marked "Plaintiff's Exhibit No. 46, Witness Scott," and is filed herewith.)

(Continued on next page.)

1448

PLAINTIFF'S EXHIBIT No. 46.

A. E. Scott, Witness.

The Southwestern Telegraph and Telephone Company.

Houston, Texas, Exchange.

Summary of Property and Net Loss, Annual Basis.

	7 months ended Aug. 31, 1919.	4 months ended Dec. 31, 1919.
Reproduction Cost New Less depreciation of Physical Property.....	5,280,642	5,280,642
Cost of Establishing Business.....	992,881	992,881
Working Capital.....	238,818	238,818
Total Property.....	6,512,341	6,512,341
Balance Net Loss.....	76,613*	409,803*
Per cent Balance Net Loss.....	1.18%*	6.29%*

*In red in copy.

Balance Net Loss.....	409,903*
Additional Revenue if rates in effect during seven months ended August 31, 1919 had continued in effect during four months ended Dec. 31, 1919.....	224,306
Balance Net Loss.....	185,497*
Per cent Balance Net Loss.....	2.85%*

1449 Q. Now, Mr. Scott, just explain that to us in a few words?

A. I have taken Mr. Hoag's reproduction cost new, less depreciation of the physical property as my basis for determining the rate of return. His reproduction cost new less depreciation is \$5,-280,642.00.

Q. Well, the total property?

A. The total property is \$6,512,341.00. The balance net loss on an annual basis for the seven months during which we had the higher rate was \$76,613.00; the per cent balance net loss, seven months, was 1.18%.

Q. Well, now, that is on the basis of the increased rates?

A. High rates, yes, sir.

Q. You have worked it out for a year, and that is the result for a year on the basis of those increased rates, using Mr. Hoag's total property figure there of \$6,512,341.00?

A. Yes, sir.

Q. Now, what is the other computation which you have made there, Mr. Scott?

A. I have taken the result for the four months after the rates were reduced and figured it out in the same manner.

Q. That is, you used Mr. Hoag's figure there?

A. Yes, sir.

Q. And that shows net loss of \$409,803.00 does it?

A. Yes, sir.

Q. That is on an annual basis?

1450 A. Yes, sir; and the per cent balance net loss is 6.29%.

Now, I have made a further computation on this exhibit following the line of my previous exhibit, showing what the per cent net loss would have been if we had had the higher rates in effect during those four months, and that shows that the per cent balance net loss at the higher rates, would have been 2.85% balance net loss.

(Questions by Mr. D. H. Frank:)

Q. Mr. Scott, referring to the last column there, you have the statement there, "Additional Revenue if rates in effect during seven months ended August 31, 1919, had continued in effect during four months ended December 31, 1919, \$224,306.00." What do you mean by that?

A. That is the gross amount of additional revenue which we would have obtained during those months, with the higher rates, that is on annual basis.

Q. That is on annual basis?

A. Yes, sir.

Q. That is on the annual basis——

A. With increased rates.

Q. That is on the annual basis with increased rates, would have produced——

A. That much more money.

Q. —\$224,306.00?

A. That much more money.

1451 Q. That much more money than was produced on annual basis during four months ended December 31st, 1919?

A. Yes, sir, that is right.

Q. Now, just why does the per cent balance net loss amount to 2.85 per cent under those conditions and up there under the seven months, when you had the rates in effect, the balance net loss was only 1.18?

A. Expenses have been going up very rapidly, and during these four months, as shown by exhibit No. 42, the increase in——increase on an annual basis was about \$170,000.00, and that is reflected in this balance net loss for those four months by \$185,000.00, whereas during the seven months it was only \$76,000.00.

Q. So that during the four months time in the latter part of the year 1919, not only did your revenues go down because of the action of the city, but all your expenses went up at the same time?

A. Yes, sir; the traffic department expense alone increased \$100,000.00.

Q. Well, did you give away a lot of money in the traffic department during that time?

A. I don't think we gave away any money. We had to increase the salaries of our operators in order to keep them, and get them.

Q. Well, why did you increase the salaries of the operators?

1452 A. In order to get operators and to keep them satisfied if we could.

Q. Did you give the operators more money in order to make a better showing in this case?

A. If we had not given them more money we very probably would not have been able to give them very much telephone service in Houston.

Q. I believe that is all.

Cross-examination.

Questions by Mr. Howard:

Q. This last item, where you show net loss for \$409,803.00—that is, 6.29%—that would indicate that your operating expenses, or that loss, is about equivalent to what you claim for depreciation, the per cent is about the same, 6.29 and you claim I believe six—around six?

A. That indicates that we did not have enough return to lay aside any depreciation.

Q. Yes, just about paid it?

A. We would have broken even without laying aside anything for depreciation.

Mr. D. H. Frank: Or anything for dividends.

A. Dividends or interest or returns of any kind.

1453 Q. You figure dividends on a valuation of about \$5,280,000.00?

A. Yes. The depreciation is figured on physical property. Of course this per cent depreciation is on the total property.

Mr. D. H. Frank: There is no depreciation figure there.

Q. Of course, it follows if you have used too high a value in setting up the figures upon which you base your depreciation, that it will show corresponding smaller net loss?

A. Well, the facts are that we lost money, that our actual operating expenses exceeded the revenues and constructing and maintenance items.

Q. Of course. I asked you, it follows, if you used higher figures for depreciation, that loss would be correspondingly reduced.

A. Yes, sir.

1454 A. E. SCOTT, a witness for plaintiff, testified as follows:

Direct examination:

Q. Now, Mr. Scott, have you prepared an exhibit showing a detailed statement of the revenues and expenses for the seven months' period of 1919, during which the increased rates were in effect?

A. Yes, sir. (Handing counsel a paper).

Mr. J. D. Frank: We desire to offer that in evidence as plaintiff's Exhibit No. 43.

(See page 1387.)

1455 Q. This exhibit consists of three pages I believe?

A. Yes, sir. This is a detail of the figures from which I derived the next to the last column in my exhibit No. 42.

Q. Now, Mr. Scott, I want you to take this exhibit up in detail and tell us what the revenues were derived from and what the various items of expense were, so that we can thoroughly understand it?

A. Now, before I start, I want to call particular attention to the fact that all the figures which are in this exhibit are for seven months, they are not on annual basis—the exhibit 42 is on annual basis, but these figures are actual results for seven months, these are actual figures right from our records. The first item we have is Exchange Service Revenues. The first column the account number is the account number prescribed by the Interstate Commerce Commission.

Q. Yes, sir, so these numbers 501 and so on down there, are numbers prescribed by the Interstate Commerce Commission?

A. Yes, sir. Account 500 Subscribers' Station Revenues, including the revenues derived from all the stations within the city limits

of Houston, or within Houston for exchange service; that includes the P. B. X revenues, as well as business and residence.

Q. By "P. B. X" you mean Private Branch Exchange?

A. Yes, sir, that is only the exchange number, you know, 1456 of course, no poles in this private account. The total of that is \$552,507.26. Account 501 is Public Pay Station Revenues—that is, revenues derived from public pay stations, except the toll revenues—and amount to \$3,244.45; that is local messengers at pay stations. Account 503 is Service Station Revenues, amount to \$253.78.

Q. What are those services?

A. Service stations as stations where the subscriber owns part or all equipment, or part or all of the line—don't own all either, but owns some part of the equipment or a very small item, and used in connection with farms. Account 504 is Private Exchange Lines, amount to \$375.00 Private Exchange Lines are lines which receive no exchange service, they are lines between two plants of one concern—you have an example of one concern that has an office here in town and also has a plant down at the basin, and they have a private exchange line between those two offices, they get no exchange service through there, but we furnish the line and furnish the equipment. This revenue is derived through that.

Q. That is, some line owned by you, not connected with the local exchange?

A. Yes, sir, that is right.

Q. All right.

A. Account 505, Minor Rents of Exchange Plant, covers the revenue derived from renting our plant to others, the plant that 1457 we rent to others consists of furnishing of space on our pole lines, for the wires of other concerns.

Q. That is, the Western Union, Postal, etc.

A. To the Western Union, the Postal and to the electric light company, and some other cases, and also rent a space in our conduit; that amounts to \$3,507.82. All of these items down to this point represent actual revenues which we have received at Houston. We next have now an Estimated Rental for 22,443 feet of conduit used for Toll Purposes. We use part of our exchange plant for a toll property; we are giving the exchange credit here for the use of that property, but it don't get on to our accounts, and it is worked up specially to get it into this exhibit.

Q. Now, what rental do you allow the local exchange there for the use of the local property by the toll equipment?

A. We allow eight cents per foot of conduit.

Q. Well, now, how did you determine that rental?

A. That is the regular commercial rate that we are now paying where we are renting property from others, or what they pay us for the use of our property; it is the regular standard.

Q. These other companies, such as the Western Union, the Postal and so on?

A. Yes, sir, any outside concern that wanted to use our conduits would have to pay at this rate; or if we wanted to use the conduit of any other concern, we would have to pay at this rate, it is the regular standard rate.

Q. Then what is the next item there, Mr. Scott?

A. The next item is an item similar to the other, it is the toll—the plant uses 4.33 circuit miles of our exchange cable, they are charged, or we have given the exchange credit here at the rate of \$2.50 per quarter circuit mile or fraction thereof. That is the standard commercial arrangement.

Q. The same rate that you charge the Western Union and that the Western Union charges you?

A. Yes, sir.

Q. And other wire companies?

A. That is the rate we would have to pay and that is the rate the toll plant would have to pay if it was independent and rented this property from the exchange.

Q. Then you get as a total for the exchange service revenues of how much?

A. \$560,962.88.

Q. Now, then, take up the other items of revenue?

A. The next item of revenue we have is Toll Service Revenues. Account 510 includes the commission allowed to the exchange for commission on toll messages originating at Houston; they allow 25% of the total value of the originating call at Houston: 1459 the total calls amounted to \$256,336.19, 25% of this is \$64,084.05.

Q. That is credited to the local exchange for the handling of that long distance service over local telephones scattered throughout the city?

A. Yes, sir.

Q. Now, Mr. Scott, is that the allowance that is usually made?

A. We have hundreds of contracts with telephone companies where we allow them 25% for originating toll business, we have many other contracts where we allow 12½% on incoming calls and 12½% on outgoing calls; it is a fifty fifty proposition whether you take 25% of the outgoing or 12½% each way.

Q. Well, how would it effect the situation if you would take the 12½ and 12½ in Houston instead of taking 25% on outgoing calls?

A. We made a study of the month of September in 1919, and we found that the outgoing business in Houston is considerably larger than the incoming business, there were about 33,000 calls going out of Houston in the month of September and about 26,000 some odd coming in,—so working this on the basis of 25% of the outgoing business we are giving the exchange much the better for it.

Q. Now, Mr. Scott, that is the commission which you usually allow other companies and which they allow you for this same arrangement, isn't it?

A. Yes, sir; we have hundreds of contracts on this same basis.

1460 Q. I believe there is some other witness to follow you that is to testify on this 25% is there?

A. Yes, sir.

Q. Then what is the next item that you have there?

A. The next item is commission A. T. & T. messages. Instead of taking the 25% on A. T. & T. messages, we have taken a flat amount; that is the amount which the A. T. & T. allows on all messages originating in Houston which pass over the A. T. & T. line or some part.

Q. Well, what is this allowance?

A. The contract with the A. T. & T. provides for an allowance of 25% on all messages originating at points other than the pay stations, the commission not to exceed 30 cents in any one case; and for messages which originate at pay stations they allow 50% not exceeding 60%. We make a study periodically of the basis of this 25% and 50% arrangement, to determine what the average amount per message is, and after determining it, we use that amount for the next time when a further study is made—which is 30.76 cents, is the actual figure on Houston calls, it amounts to about 25% on a message. This item is \$164.57.

Q. It works out about 25%, the same as the other?

A. There is very little A. T. & T. business out of Houston.

Q. Does the A. T. & T. own any lines out of Houston?

A. No, sir, it stops at the line.

1461 Q. Your line connects with it at the Texas border?

A. Yes, sir.

Q. There is only a small part of it here in Houston?

A. Very little.

Q. Of course, beyond that, are there interstate calls that go beyond the lines of the State?

A. Yes, sir.

Q. What is this next item, Allowance for Handling Through Phone Calls?

A. There are many calls which have to have some handling in Houston which do not originate here, that is what we call a through call, Houston is the switching point; a call coming through—I couldn't tell you what particular points might be involved—but a call coming from Beaumont and going through Houston, is going to Dallas, would be switched here; we have to make allowance through other companies for handling those through calls and that is what this is; that is not involved in this commission item because it is not an original call or an incoming call, it is a call that passes through and that is the only way that the city would get any credit for it—that the exchange would get any credit for it.

Q. All right. Now take up—

A. That gives a total of toll revenue of \$69,923.88.

Q. Now, take up the other operating revenues?

A. The next item we have is Miscellaneous Operating Revenues. Account Number 521, telegraph commissions amount to \$1,294.86.

Q. Well, what is that Mr. Scott?

A. You know you can go to the telephone and call up the Western Union and place a telegram. At the end of the month with your telephone bill you will get a charge for this telegram. The Western Union allows a commission for originating this business and handling it and collecting it, and that is what this amount covers.

Q. How much commission do they allow on that?

A. I am not sure about that—I think it is 5%.

Q. That is done primarily for the convenience of the subscribers, isn't it?

A. Yes, sir. It amounts to very little for us.

Q. Then what is your next item?

A. The next item is Account 523, Advertising and Directory, \$9,351.27. We have advertising in our directories, we charge for that, of course; we also sell some few directories; any sales of directories is included in this amount. That is what those two items are that are involved there.

Q. All right. Go ahead with some other.

A. Account 524, Rents from other Operating Property, \$231.00, is made up almost entirely from the rent of a building, I 1463 think, on the Hadley property, a small building that is not used for telephone purposes and which we rent out.

Q. That was not included in this appraisal?

A. No; but I have included the revenue in here, and also the expense connected with it, and it is also included in my book cost of other property at Houston.

Q. And then what is this, Other Miscellaneous Revenues?

A. Miscellaneous Revenues are items which cannot be allocated to any other account or items, I couldn't tell you just exactly what that account is; it amounts to only \$295.00.

Q. All right. What is the next item, Mr. Scott?

A. The next item is an estimated item for the use by the division and district offices of space in our Preston building.

Q. Now, those are division offices—perform services for other places than Houston, as well as serving Houston also?

A. Yes, sir.

Q. And you estimate the amount of rentals which should be charged up against the division organization for the use of that local property?

A. Yes, sir, that is what I have done here.

Q. You have included \$1,207.37. How did you get that figure, Mr. Scott?

A. Why, I found the part of the building, the space occupied by these division people; I have allowed a rental rate of \$1.80 a square foot per annum for the space occupied by these division people.

1464 Q. Where did you get that figure of \$1.80?

A. I got that from Mr. Hoag. I understand Mr. Hoag got that by going around to various people in this city and finding out what he could rent space for for similar to office space in that building; I understand that he got rates varying \$1.60 up to \$2.20 and that was an average.

Q. That is per year for each square foot?

A. That is per year for each square foot, yes, sir; I used \$1.80, being the average of the figures he got. In a previous case we used \$1.20, but office space at that time was not as valuable as it is now.

Q. All right. Now, that—

A. That concludes the miscellaneous revenues, and gives a total of \$12,390.38.

Q. All right. Go ahead.

A. Total Telephone Operating Revenues, \$643,277.14.

Q. All right. Now, what is the next item?

A. The next item is Account 527, that is the amount we paid to the American Telephone and Telegraph Company under what is known as the 4½% arrangement for rights, privileges, and use of property, engineering account and for other services, amounts to \$27,497.80.

Q. Why do you deduct that from your operating revenue at this part of the proceeding, why don't you include that as one of your items of expense?

1465 A. The Interstate Commerce Commission provides that this shall be treated as a deduction from gross expense, instead of being included in our expenses, and I followed their set up in making this. Prior to the time we operated under the Interstate Commerce Commission, it used to be treated as expense.

Q. Now, there will be other witnesses that will testify in reference to that license contract and the amount of money paid?

A. Yes, sir.

Q. What is the balance of your telephone operating revenues after deducting that 4½% as paid under the license contract?

A. \$615,779.27.

Q. Now, take up your items of expenses, Mr. Scott?

A. The first item we have is Maintenance Expenses. That is made up of Account 601, Supervision of Maintenance, \$10,545.19.

Q. Well, I do not think it will be necessary to take all these items up in detail. What do you get as your total maintenance expense?

A. \$72,296.71 is the total maintenance. From that I deducted \$4,350.72, which was charged to our reserve, our depreciation and reserve; that is in connection with extraordinary repairs and
1466 unusual casualties—we provide in our reserve for unusual storms and when they occur we do not charge it to our current maintenance, we charge it against our reserve. That leaves total current maintenance \$67,945.99.

Q. All right. Now, take up your Traffic Expense.

A. The Traffic Expenses are self explanatory. The total is \$226,408.55, the principal items, of course, being operators' wages including account 624, which amounts to \$172,920.54.

Q. Out of that \$226,408.55 for your total Traffic Expenses, your operators' wages alone amount to how much?

A. \$172,920.54.

Q. You also have other traffic employees, do you not, Mr. Scott?

A. Yes, sir. The total traffic pay roll paid out at Houston amounts to over \$205,000.00 in those seven months.

Q. In other words over \$200,000.00 of these Traffic Expenses go to the traffic employes in the City of Houston?

A. Yes, sir, actual bona fide cash expenditure at Houston, over \$200,000.00 out of this \$226,408.55.

Q. All right. Now take up your Commercial Expenses?

A. Commercial Expenses amount to \$48,088.67, the principal items being Revenue Accounting and Revenue Collecting, the directory expenses and the local commercial administration. About half of that is pay rolls paid directly at Houston.

1467 Q. Now, what is your next item—General Expenses?

A. General Expenses, yes, sir.

Q. Just in a general way, what does that cover, Mr. Scott?

A. That covers the salary and the expenses of the general officials of the company, and includes in addition insurance amounts paid to employes in connection with our relief department plan, and for expenses in connection with damages, etc. It also includes an amount of \$700.00 paid to the telephone engineer, to the City of Houston.

Q. Now, on that Relief Department and Pensions, in a few words what is that, Mr. Scott?

A. We have a plan whereby we pay our employes after they have been with us a certain time—

Q. Speak out louder, Mr. Scott, so we can hear you?

A. —certain amounts based on their salary, when they are sick, also pay them accident benefits, we also pay death benefits and pensions. Under the state laws of Texas, we, of course, have to pay accident benefits, but under the plan we operate, we arrange that the employee gets the best of any accident benefit that he would be entitled to,—that is, suppose your compensation law provided a certain amount and our plan provided for another amount, we would give the employee the best deal; if the compensation law required a larger amount, we would pay him that; if our compensation plan provided for a larger amount, we would give him that.

1468 Q. And employees who have been working for the company a certain length of time are paid their salaries for a certain length of time when they are sick?

A. Yes, sir.

Q. I believe Mr. Pennell is going to testify in reference to that, isn't he?

A. I understand he is going to. I have one copy of the plan here.

Q. Well, you needn't mind about getting a copy of the plan at this time, we will have Mr. Pennell put that in. Then you get as the total of General Expenses how much, Mr. Scott?

A. \$27,619.53.

Q. Deducting that from your total telephone operating expenses, you have how much?

A. Adding the maintenance, traffic, commercial and general expenses, you get a total of telephone operating expenses of \$370,-

062.74; deducting the total expenses from the total revenues, we get \$245,716.53.

Q. All right. Now take up the other deductions that you have?

A. The first item of deduction from this amount is the uncollectible items.

Q. What is that, Mr. Scott?

A. Why, we, like any other concern, have certain bad 1469 accounts that we are not able to collect all that we bill, and this is the amount which we have used as the uncollectible for those seven months; it does not represent the actual uncollectibles for those seven months.

Q. Well, why didn't you take the actual amount of uncollectibles for the seven months?

A. When I saw the figures I determined that there must be something unusual happened during the seven months, the amount of it is very large, amounts to practically forty or fifty per cent more than the amount I used here, but rather than use that, I made a study of the actual losses for the six years prior to 1919 and I obtained a per cent of $1\frac{1}{8}$ as being the per cent of operating revenue which is lost, and I applied that $1\frac{1}{8}$ per cent to the operating revenue for the period and got this, \$9,312.58.

Mr. Howard: That was largely due to the Burleson undertaking, wasn't it—being up in the air so long?

A. It may have been in part. It was unusually large.

Mr. J. D. Frank: Business was very mixed up, lots of people didn't pay their bills on account of advice by counsel.

1470 Q. In other words, Mr. Scott, the actual amount of uncollectibles during this seven month period was abnormally large, and you made a study of what the average uncollectibles were, for the last six years and applied that average to this in order to eliminate the unfair conditions?

A. Yes, sir; I thought it was the proper thing to do.

Q. Now, what is this Taxes Assignable to Operations?

A. That is all taxes paid by the company, either to the city of Houston or to Harris County, the State of Texas or to the United States Government, which properly was chargeable to Houston—don't include all the taxes paid at Houston nor all the taxes paid in Harris County, it is simply a proportion chargeable to Houston—I made a study of the various tax payments, and assigned certain amounts to Houston on the basis of these studies.

Q. Well, were those taxes on the property constituting this local exchange here?

A. Yes, sir,—that is taxes which are assignable to the exchange property here in Houston.

Q. Well, by "Assignable" you mean the taxes which you actually paid on Houston property, isn't that a fact?

A. Yes, sir.

Q. Your other statement you made there was with reference to—what you meant to say was you had not included any taxes on property other than the Houston exchange?

1471 A. Yes, sir, that is what I was trying to infer.

Mr. Howard: Do you include income tax on that?

A. Yes, sir.

Mr. Howard: How did you get any income on the Houston exchange when you were losing money?

Mr. J. D. Frank: Well, we had to pay $1\frac{1}{2}\%$ gross income tax, we had to pay it to the City of Houston.

Mr. Howard: I am not talking about that, I am talking about income tax.

A. The income tax is a general tax, we don't make a return for the City of Houston or San Antonio, we make up a return for all the—

Mr. Howard (interrupting): Then you charge up to the City of Houston, income tax?

A. It is part by the City of Houston and comes out of the net earnings, by deducting it here I am taking it out of the net earnings. It doesn't make any particular difference where you deduct it, it will come out at some point, and I have taken it out at this point, after deducting my expenses from my revenues—I am now deducting this tax item simply to come down to the net revenue, we will have to pay the city that.

1472 Mr. Howard: Yes, sir, that is the point I am making, that is income tax, and not from the amount deducted—

A. Well, this is the set up by the Interstate Commerce Commission, where you put your taxes.

Mr. Howard: It is charged as operating expenses.

A. It is not charged as operating expenses, it is treated as a deduction from operating revenues, after paying expenses—it is not part of the operating expenses and is not so treated, it is straight deduction.

Q. All right, go ahead, Mr. Scott?

A. The total taxes is \$69,104.96; the total of uncollectibles and taxes is \$78,417.54. Deducting this from the net telephone operating revenues, we have a balance of operating revenue, of \$167,298.99.

Q. All right. Now, what other deductions have you?

A. Now, from this we must deduct any rent we must pay, which amounts, to a total of \$1,990.73.

Q. Well, just take the first item there and tell us what it is?

A. The first item is Rent Deductions for Telephone Offices; we went space over in, I think it is called the Texas building

1473 isn't it, or California building.

Q. I don't know where it is, I know that you rented some outside property.

A. Yes, sir. That is a small item, \$1,990.73. Deducting—

Q. What is the balance of your net income before deducting depreciation, Mr. Scott?

A. \$165,308.26.

Q. All right. Complete your papers there?

A. Depreciation for seven months, based on the reproduction cost new, and the rates furnished by the engineer, was \$209,999.93;

deducting depreciation, gives a balance net loss for the seven months of \$44,691.67.

Q. Now, Mr. Scott, have you prepared an exhibit showing a statement of revenues and expenses for the four months ended December 31st, 1919?

A. Yes, sir. (Handing paper to counsel.)

Mr. J. D. Frank: We desire to offer that in evidence as Plaintiff's Exhibit No. 44.

The paper was thereupon received in evidence, marked "Plaintiff's Exhibit No. 44, Witness Scott," and is as follows:

(See page 1390.)

PLAINTIFF'S EXHIBIT #43.

A. E. Scott, Witness.

The Southwestern Telegraph and Telephone Co.

Houston Exchange.

Statement of Revenues and Expenses, Seven Months Ended August 31st, 1919.

Account number.	Title of account.	Exchange Service Revenues.	
		Amount.	Total.
500	Subscribers' Station Revenues	\$552,507.26	
501	Public Pay Station Revenues	3,244.45	
503	Service Stations	253.78	
504	Private Exchange Lines	375.98	
505	Minor Rents of Exchange Plant	3,507.82	
	Estimated Rental for 22,443 ft. of Conduit used for Toll purposes @ 8¢ per ft. per annum \$1,795.44—Seven Months	1,047.34	
	4.33 circuit miles of 22 gauge exchange cable used for Toll Purposes \$2.50 per quarter circuit mile or fraction thereof—\$45.00—Seven months ...	26.25	
506	Other Exchange Revenues .....	.....
	Total		560,962.88

PLAINTIFF'S EXHIBIT #43—Continued.

Toll Service Revenues.

510 Message Tolls: Commission on Toll Messages passing over lines of The Southwestern Telephone & Telegraph Co. and other Connecting Companies on which a commission of 25% is allowed:

Account number.	Title of account.	Amount.	Total.
	Paid Tolls \$256,336.19 @ 25%.....	64,084.05	
	Commission on 535 A. T. & T. Co.'s Messages @ 30.76¢ each.....	164.57	
	Allowance for handling through toll calls.....	5,675.26	
	Total		\$69,923.88

Miscellaneous Operating Revenues.

521	Telegraph Commissions	1,294.86	
522	Other Telegraph Charges		
523	Advertising & Directory	9,351.27	
524	Rents from other Operating Property.....	231.00	
525	Other Miscellaneous Revenues.....	295.88	
	Est. Rent for Div. Ofcs. in Houston Exch. Bldg.....	1,217.37	
	Total		\$12,390.38
527	Total Telephone Operating Revenues.....		\$643,277.14
	Less Licensee Revenue Dr.—Rights, Privileges and Use of Property—Bell System		27,497.87
	Balance Telephone Operating Revenues.....		\$615,779.27

Maintenance Expenses.

1475	Supervision of Maintenance.....	\$10,545.19
601	Repairs of Aerial Plant.....	18,095.39
602	Repairs of Underground Plant.....	1,286.95
603	Repairs of Central Office Equip.....	19,515.95
604	Repairs of Station Equipment.....	12,554.89
605	Repairs of Buildings and Grounds.....	1,680.94
606	Station Removals and changes.....	8,618.24
607	Other Maintenance Expenses.....	
610		
	Total	\$72,296.71
611	Less Repairs Charged Reserves.....	4,350.72
	Total Current Maintenance.....	\$67,945.99

Traffic Expenses.

621	Traffic Superintendence	13,917.30
622	Service Inspection	1,733.07
623	Operating Clerical Wages	4,356.27
624	Operators' Wages	172,920.54
626	Rest and Lunch Rooms	5,287.06
627	Operators' Schooling	11,771.60
628	Transmission Power	4,234.97
629	Central Office Stationery & Pig.....	1,900.54
631	Miscellaneous Central Office Exp.....	7,576.96
632	Pay Station Expenses	1,862.96
633	Other Traffic Expenses.....	847.28
	Total Traffic Expenses	\$226,408.55

PLAINTIFF'S EXHIBIT #43—Continued.

Account number.	Title of account.	Amount.	Total.
Commercial Expenses.			
640-10	General Commercial Administration	6,537.02	
640-30	Local Commercial Administration	7,520.39	
642	Advertising	2,133.89	
643	Canvassing	235.62	
646	Revenue Accounting	9,672.02	
647	Revenue Collecting	10,004.31	
648	Pay Station Commissions	2,138.19	
649	Directory Expenses	9,847.23	
650	Other Commercial Expenses		
	Total Commercial Expenses		\$48,088.67
General Expenses.			
660	General Office Salaries	9,916.09	
663	General Office Supplies & Exp.	3,659.79	
667	General Law Expenses	3,048.70	
668	Insurance	1,496.75	
669	Accidents and damages	11.60	
670	Law Expenses connected with damages	1,021.55	
672	Relief Department and Pensions	6,606.17	
675	Other General Expenses	1,158.88	
673	Telephone Franchise Requirements	700.00	
	Total General Expenses		\$27,619.53
1476	Total Telephone Operating Exp.		\$370,062.74
	Net Telephone Operating Revenues		245,716.53

Deductions from Operating Revenues.

304	Uncollectable Operating revenues.....	9,312.58	
	Taxes Assignable to Operations.....	69,104.96	
	Total	<u>78,417.54</u>	
	Balance Operating Revenue		<u>167,298.99</u>

Deductions from Gross Income.

331	Rent Deductions for Telephone Offices.....	1,513.58	
332	Rent Deductions for Conduits Poles and other Supports.....	88.74	
	Estimated Rental for 3,128 Exchange Circuit Attachments on Toll Poles @ 10¢ each per annum—\$312.80—Seven months.....	182.47	
333	Rent Deductions for Instruments and Equipment.....	33.56	
334	Miscellaneous Rent Deductions.....	172.38	
341	Miscellaneous Deductions from Income.....		
	Total Deductions	<u>1,990.73</u>	
	Balance Net Income before Deducting Depreciation.....		<u>165,308.26</u>
	Depreciation for 7 months ended August 31st, 1919.....		<u>209,999.93</u>
	Balance Net Loss		<u>\$44,691.67</u>

(red)

PLAINTIFF'S EXHIBIT #44.

1477

A. E. Scott, Witness

The Southwestern Telegraph and Telephone Co.

Houston Exchange.

Statement of Revenues & Expenses, Four Months Ended December 31, 1919.

Exchange Service Revenues.

Account number.	Title of account.	Amount.	Total.
500	Subscribers' Station Revenues	\$253,223.11	
501	Public Pay Station Revenues	2,254.95	
503	Service Stations	144.00	
504	Private Exchange Lines	219.19	
505	Minor Rents of Exchange Plant	2,429.30	
	Estimated Rental for 23,443 Ft. Conduit used for Toll Purposes @ 8¢ per ft. per annum	598.48	
	4.33 Circuit miles of Exchange Cable used for Toll Purposes @ \$2.50 per quarter circuit mile per annum	15.00	
506	Other Exchange Revenues .....	.....
	Total		\$258,884.03

Toll Service Revenues.

510	Message Tol-s: Commission on Toll Messages passing over lines of The Southwestern Tel. & Tel. Co. and other connecting Companies on which a commission of 25 % is allowed: Paid Tolls \$154,478.34 @ 25 %	38,619.58
	Commission on 346 A. T. & T. Co.'s Messages @ 30.76¢ each	106.43
	Allowance for switching Through Calls	4,276.76
	Total	\$43,002.77

Miscellaneous Operating Revenues.

521	Telegraph Commissions	1,249.28
522	Other Telegraph Charges	5,945.23
523	Advertising and Directory	177.00
524	Rents from other operating Revenues	132.11
525	Other Miscellaneous Revenues	695.64
	Estimated Rent for Division Offices	
	Total	8,199.26
527	Total Telephone Operating Revenues	310,086.06
	Less Licensee Revenue—Dr. Rights, Privileges and Use of Property—Bell System	13,036.11
	Balance Telephone Operating Revenues	297,049.95

PLAINTIFF'S EXHIBIT #44—Continued.

1478	Account number.	Title of account.	Maintenance Expenses.	Amount.	Total.
	601	Supervision of Maintenance		6,246.25	
	602	Repairs of Aerial Plant.....		14,464.53	
	603	Repairs of Underground Plant.....		2,029.78	
	604	Repairs of Central Office Equip.....		19,792.36	
	605	Repairs of Station Equipment.....		7,190.33	
	606	Repairs of Buildings & Grounds.....		1,225.15	
	607	Station removals and changes.....		6,393.99	
	610	Other Maintenance Expenses .....		.....
		Total		57,342.39	
	611	Less Repairs Charged Reserves.....		5,284.32	
		Total Current Maintenance			\$52,058.07
		Traffic Expenses.			
	621	Traffic Superintendence		10,917.95	
	622	Service Inspection		1,377.13	
	623	Operating Clerical Wages		2,828.45	
	624	Operators' Wages		126,518.63	
	626	Rest and Lunch Room		2,574.55	
	627	Operators' Schooling		6,408.19	
	628	Transmission Power		2,757.94	
	629	Central Office Stationery & Ptg.....		1,787.73	
	631	Miscellaneous Central Office Exp.....		5,537.87	
	632	Pay Station Expenses		1,373.16	
	633	Other Traffic Expenses		1,263.90	
		Total Traffic Expenses			\$163,345.50

Commercial Expenses.

640-10 General Commercial Administration	3,151.82
640-30 Local Commercial Administration	5,032.84
642 Advertising	1,022.02
643 Canvassing	50.64
646 Revenue Accounting	7,497.41
647 Revenue Collecting	6,225.11
648 Pay Station Commissions	1,033.47
649 Directory Expenses	5,306.46
650 Other Commercial Expenses	.....
Total Commercial Expenses	\$29,319.77

General Expenses.

1479	
660 General Office Salaries	\$7,143.38
663 General Office Supplies & Expenses	2,231.95
667 General Law Expenses	1,368.38
668 Insurance	711.62
669 Accidents and damages	.....
670 Law expenses connected with damages	742.23
672 Relief Department and Pensions	5,039.86
675 Other General Expenses	386.73
673 Telephone Franchise Requirements	400.00
Total General Expenses	\$18,024.15
Total Telephone Operating Expenses	262,747.49
Net Telephone Operating Revenues	34,302.46

PLAINTIFF'S EXHIBIT #44—Continued.

Deductions from Operating Revenues.

Account number.	Title of account.	Amount.	Total.
304	Uncollectable Operating Revenues.....	4,732.02	
305	Taxes Assignable to Operations.....	44,891.25	
	Total		49,623.27
	Balance Operating Revenues.....(red)		15,320.81

Deductions from Gross Income.

331	Rent Deductions for Telephone Offices.....	1,006.36	
332	Rent Deductions for Conduits, Poles and other Supports.....	23.40	
	Estimated Rental for 3,128 Exchange Circuit attachments on Toll Poles @ 10¢ each per annum.....	104.26	
333	Rent Deductions for Instruments and Equipment.....	16.78	
334	Miscellaneous Rent Deductions	129.78	
341	Miscellaneous Deductions from Income.....		
	Total Deductions		1,280.58
	Balance Net Income before Deducting Depreciation.....(red)		16,601.39
	Depreciation for four months.....		119,999.96
	Balance Net Income		136,601.35

1480 LAMAR LYNDON, a witness for the defendant, testified as follows:

Direct examination.

Questions by Mr. Howard:

Mr. Howard: This is Lyndon Exhibit No. 7.

(The exhibit was thereupon received in evidence, marked: "Lyndon Exhibit No. 7; witness Lamar Lyndon," and is as follows:

Basis.

(1) Acceptance of all charges both direct expense and allocated to Houston Exchange.

(2) Credit of all Tolls to Houston Exchange.

(3) Removal of the $4\frac{1}{2}$ per cent charge of the A. T. & T. Co. and substitution therefor of actual value of property supplied by that Company.

Revenues.

(a) Exchange Service Revenues.....	\$880,439
(b) Miscellaneous Operating Revenues.....	22,472
(c) Toll Service Revenues.....	442,156

Expenses.

(a) Use of A. T. & T. Co.'s Property.....	12,900
(b) Maintenance Expenses.....	129,956
(c) Commercial Expenses.....	418,005
(d) Commercial Expenses.....	84,076
(e) General Expenses.....	48,841

1481

(f) Uncollectible Items.....	15,084
(g) Taxes	29,985
(h) Other deductions.....	3,561

Total	812,188
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Net Operating Revenues.....	536,870
Deduc. Annual Depreciation.....	136,320

Net Balance for Surplus and Dividends.....	400,550
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The income was derived from a double rate which was \$5.00 for business and \$2.00 for residence telephones respectively for 5 months while for 7 months the rates were \$7.50 for business and \$3.00 for residence telephones, respectively. If the rate had been maintained

at the lower figures of \$5.00 and \$2.00, the income would have been \$115,055 less than the actual income received. Deducting this sum from the net balance, there remains a final net profit of \$284,604.

The Federal Income Tax is not included in this Net Profit because Net Revenue is not intended by law to be deducted except from Net Revenue itself.

1482 *Statement of Revenues and Expenses, 1919.*

Basis.

(2) Exclusion of all general and other expenses not incurred in Houston, and allowance of percentages of Toll Revenues.

(a) Toll Allowance, 25 per cent.

Total Revenues for year.....	\$1,024,213
Deduct for excess rates, 7 mos.....	115,955

Normal Gross Income.....	908,258
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Total Expenses, Excluding General and Allocated Deductions.

Maintenance (less acc. 801).....	116,676
Traffic (less accts. 621 and 631).....	376,259
Commercial (less accts. 630-10 and 642).....	69,749
General (668 and 674 only).....	3,635
Charge for use of A. T. & T. Co.'s property.....	12,900
Uncollectible items.....	15,084
Taxes.....	99,965

Total.....	697,829
Gross profit.....	210,429
	136,330

Balance for Dividends and Surplus.....	74,099
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1483 If instead of deducting all the General Items, the same percentage of the sum of these be added to the Annual Expenses as the percentage of Toll Revenue credited to the Local Exchange the amount of the net balance will be correspondingly reduced.

The items excluded are:

Acct. 601—Supervision of Maintenance.....	\$18,281
Acct. 621—Traffic Superintendence.....	26,329
Acct. 631—Miscellaneous Central Office Exp.....	15,415
Acct. 630-10—General Commercial Administration....	10,656
Acct. 642—Advertising.....	3,669
General Expenses (all except 666 and 674).....	45,005

Total.....	119,357
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25%—\$20,839.

Deducting this sum from the previously found net profit of \$74,009, the Net Balance is \$44,170.

Net Profit to pay 8% on \$3,000,000.....	180,000
Required Addition to Income.....	135,830

which is a 17.8 per cent increase for subscribers' revenue.

(2) Annual profit for allowance of 35 per cent of Toll Income and 35 per cent of General Allocated Charges.

Previous Statement of profit on basis of 25 per cent proportion of Toll Income and General Expenses.....	\$44,070
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1484

Total Toll Income.....	
35% of Toll Income.....	\$441,030
25% of Toll Income.....	154,360
Increase in Toll Income.....	110,257

	44,103
Total General Charges.....	\$119,357
35% of General Charges.....	41,775
25% of General Charges.....	29,839

Increase in General Charges.....	11,936
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Increase in net income \$441,103—\$11,936—\$43,167.

Total net profit—\$44,170 plus \$32,167=\$76,337.

Net income required.....	180,000
Increase required	103,663

which is an increase of 13½ per cent.

In the same manner the following Net Incomes and percentage increases are found:

For 50 per cent of Toll Revenue:

Net Income	\$124,521
Increased Income Required.....	55,479
Percentage increase in present rates.....	7.3%

For 75 per cent of Toll Revenue:

Net Income	205,006,
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which is, practically, 7 per cent on present plant value.

1485 Mr. J. D. Frank: This is adjusted statement of revenues and expenses?

Mr. Howard: Yes, sir.

(By Mr. Howard:)

Q. Mr. Lyndon, I wish you would explain that exhibit which we have introduced as Lyndon Exhibit No. 7, labeled "Adjusted state-

ment of Expenses and Revenues for 1919," just briefly state what that purports to be and what it shows.

A. This is a statement in which the book receipts of the company, and all its operating expenses are included without change, except that the $4\frac{1}{2}\%$ paid to the American Telephone & Telegraph Company has been removed and for that has been substituted a proper rational amount for the rental of whatever property the American Telephone & Telegraph Company furnishes; a reasonable business amount, something that a business man would pay that was independent and not under obligations to accept it, and also there is a credit of all the toll cost of all the toll receipts to the Houston Exchange. Furthermore, the actual revenues received for the year are included, instead of those which would have been received if the increased rates had not gone into effect, although that is subsequently corrected. The total operating expenses after being deducted from the total gross income leaves as net operating 1486 revenues, \$536,879.00 for the year, and deducting the annual depreciation of \$136,320.00, from that amount leaves net balance for surplus and dividends, \$400,559. Now, there is a statement made at the bottom of that table that the income was derived from a higher rate than the normal which obtained over a considerable period, and practically \$116,000 more obtained than it would have been if the rates had remained the normal rate, and deducting that from the net profit there remains as the final net profit which would have been obtained without that increase in rate, \$284,604.00. Now, we mention there that the Federal Income Tax is not included in this net profit because net revenue is not intended by law to be deducted except from net revenue absolutely——

Mr. D. A. Frank: That's your legal opinion?

A. That's what I understand to be true

Mr. D. A. Frank: You give as your opinion that that is the law?

A. Those are statements made to me by competent——

Mr. D. A. Frank: You just stated a proposition of law under oath as your opinion of the law?

1487 A. Exactly. Now, there is another statement for 1919 which excludes from Houston all expenses which were not actually incurred in Houston. In the first statement the basis it will be noted includes as expenses all charges made direct, that is, direct expenses and those allocated to Houston. Now, in the second one, the expenses which have been allocated to Houston are rejected, and only those expenses which have been actually incurred in Houston are allowed and also in this case, we take as an experimental figure, for instance, a toll allowance of 25%, which is, as I say, the customary figure. We recognize that we cannot call for all of the toll charges, unless Houston is made to carry its proportion of the allocated costs. If it rejects the allocated costs, why, it can only then claim some rational portion of the toll, for toll receipts, and so excluding all general and other expenses——

Mr. D. A. Frank: That's in order to be fair?

A. Isn't that manifest?

(By Mr. Howard:)

Q. You can't hardly be fair with this concern because it don't undertake to set up the expenses and revenues of this institution without confusing them irretrievably with all their other operations.

A. At any rate, by taking the total revenues for the year amounting to \$1,024,213.00, and deducting therefrom the \$115,1488 955.00, which arose from the increased rate there remains as the normal gross income for the year 1919, which is the income which would have obtained if that increased rate had not been put into effect, \$908,256.00. Now, the total expenses excluding general and allocated deductions, are those, maintenance, from which we deduct account 601 and allocated charge, becomes \$116,876.00 instead of \$128,956.00; Traffic Charges, less account 621 and 631, becomes \$376,259.00, and commercial charges less account 630-10 and 642 become \$69,749.00; general expense which in this case includes account 668 and 674 only becomes \$3,625.00, instead of \$48,841.00 charged for the use of A. T. & T. Company's property \$12,900,—the 4½% being of course eliminated; uncollectible items \$15,084, which is the same as shown in the first statement; taxes, the same as shown in the first statement \$99,965.00, which gives a total of \$697,829, leaving a gross profit of \$210,429, and deducting from that gross profit the sum of \$136,320, which represents the annual depreciation, there remains as balance for dividends and surplus \$74,099. That is the second set up. The difference between the two being this: In the first one the City of Houston accepts all of the charges allocated against this exchange which would include its proportion of toll operations and maintenance and toll 1489 equipment, and takes in consideration in that all of the toll receipts. The other one is that the City of Houston is not charged with any of these costs and takes only 25% of the toll receipts. These are the fundamental differences in these two statements.

Q. You have another set up there, I believe, Mr. Lyndon.

A. Now, the other set up is that in general all of the local charges incurred are carried by the Houston Exchange and all of the toll charges which are applicable to the Houston territory and Houston area,—however they are the same percentage of these charges as is charged against Houston as the percentage of toll receipts which are allocated to Houston, that is, if the toll receipts given to Houston are 25% of the total, then 25% of the charges for maintenance of toll lines are chargeable against Houston, and that is the basis of this set up here, or this modification of the foregoing statement. Now, the items excluded, and which are allocated items, or the totals you might say, of the allocated items are \$119,357, and they are given in detail on the page. Now, 25% of this sum is \$29,839. Now, if this be deducted from the previously net profits of \$74,009, the net balance is \$44,170. That's the net balance, net earnings for the year on the basis that there was no increase in rates, and that the rates remained at \$5.00 and \$2.00. Now, the net profit

1490 required to pay 8% on the value of the property of \$3,000,000 is \$180,000.

The Master: To pay 6% you have got it here.

A. The sixes and eights on this machine in the final copies are absolutely indistinguishable, but you know 6% would make \$180,000.

Mr. D. A. Frank: A little thing like 2% wouldn't make much difference.

A. Well, it would make some.—I would like to have it, 6% would be \$180,000 and the required addition to income, that is the required addition to that \$44,170 necessary to make up the \$180,000 is \$135,830, which is 17.8% increase for subscribers' revenue. In other words, 18% increase ought to give a 6% return on the valuation of these properties. That is, on the basis of 25% of the allocated charges being carried by Houston, and 25% of the toll being allowed to Houston as credited. Now, if instead of 25% the ratio of both toll income and toll expenditure for Houston be made 35%, then by following the computations through it will be seen that in order to pay 6% on the \$3,000.00 valuation, the increase required is 13½%, that is the increase in rates; and in the same manner the net income for 50% of the toll revenue allowable to Houston, and 50% of the toll charge against Houston, shows that the
1491 increase in the present rates would be 7.3% in order to make 6% return net on \$3,000,000. If 75% of the toll revenues and the toll expenses be allowed to Houston, then the net income would be practically 7% on the present plant valuation?

Mr. Howard: I introduce this as Lyndon Exhibit No. 8, this statement styled "Allocated charges Houston Exchange. The Southwestern Telegraph & Telephone Company for 1919."

(The statement was thereupon received in evidence marked: "Lyndon Exhibit No. 8; witness Lamar Lyndon," and is as follows:

Allocated Charges.

Heavy charges are made against the Houston Exchange for expenses incurred elsewhere, namely, at Dallas and St. Louis, and it is difficult to find any foundation for these charges except that they are incurred for the benefit of The American Telegraph & Telephone Company in keeping records of the different local properties owned and which, while an obvious necessity to the parent Company does not contribute to and is in no wise necessary for the service of the public in Houston.

It is assumed as fundamental, that there can be no charge against the public of Houston except for those expenditures which
1492 definitely provide service together with all necessary local administration and engineering. It is possible that some small benefits accrue to the City of Houston from the proportion of engineering supervision given the plant by the District and General

Offices, but that these benefits warrant charges against the local Exchange in any degree approaching the amounts shown in the Company's book statements, is wholly untenable.

Consider the two following tables which show the actual and the allocated expenses for the Houston Exchange, one covering the 7 months ending August 31st, the other for 2 months ending October 31st, 1919:

For the Seven Months Ended August 31st, 1919.

Acct. No.	Title of account.	Total for allocation.	Allocated to Houston.	Direct Houston expense.	Total Houston expense.
660	General Office Salaries & Wages.....	70,172.53	9,916.09	.....	9,916.09
663	General Office Supplies and Expenses.....	25,899.00	3,659.79	.....	3,659.79
667	General Law Expenses.....	21,574.56	3,048.70	.....	3,048.70
668	Insurance.....	144.10	20.36	1,476.39	1,496.75
669	Accidents & Damages.....	.....	.....	.....	.....
670	Law Expenses Connected with Damages.....	7,229.17	1,021.55	.....	1,021.55
672	Relief Dept. & Pensions.....	46,749.49	6,606.17	.....	6,606.17
675	Other General Expenses.....	5,236.22	739.93	418.95	1,158.88
	Totals	177,005.12	25,012.59	1,895.34	26,907.93

1493 For the Two Months Ended October 31st, 1919.

Acct. No.	Title of account.	Total for allocation.	Allocation to Houston.	Direct Houston expense.	Total Houston expense.
660	General Office Salaries & Wages.....	24,101.72	3,750.95	.....	3,750.95
663	General Office Supplies and Expenses.....	6,272.21	976.15	.....	976.15
667	General Law Expenses.....	3,822.48	594.89	.....	594.89
668	Insurance.....	11.51	1.79	396.98	398.77
669	Accidents & Damages.....	.....	.....	.....	.....
670	Law Expenses Connected with Damages.....	2,100.00	326.82	.....	326.82
672	Relief Department and Pensions.....	13,730.18	2,136.83	.....	2,136.83
675	Other General Expenses.....	1,287.69	200.40	.....	200.40
	Totals	51,325.79	7,987.83	396.98	8,384.81

These tables show that of all the general charges, the only expenditures actually incurred in Houston are for insurance.

Nor does this allocation under General Expenses include the whole story. Account No. 601, entitled "Supervision of Maintenance"; Account No. 621, entitled "Traffic Superintendence"; Account No. 640-10, entitled "General Commercial Administration"; Account No. 642, entitled "Advertising," and Account No. 631, entitled "Miscellaneous Central Office Expenses," all aggregating \$74,352, were either wholly, or partially, allocations to the Houston Exchange, and not actual disbursements, made locally.

It is impossible to conceive that if the Houston Exchange were a local utility, and not one unit in an immense corporation which covers the entire United States, that it would be compelled to incur overhead charges of any such magnitude, hence, this burden cannot, logically, be imposed on the Houston public. I, therefore, have made an arbitrary estimate of what additional overhead would be required for the Houston Exchange, if it had no outside financial relations, and the amount of these before-named allocated charges have been deducted from the operating expenses as shown by the Company's books, in order to make a rational figure of reasonable and proper expense for Administration, Supervision and other overhead charges.

1495

Article IV.

Telephones.

Any person, firm, corporation or receiver operating or owning telephone lines and exchanges within the City of Houston, Harris County, Texas, engaged in the business of furnishing telephone connection and service to the citizens of said City of Houston, shall charge not exceeding the following rates, to wit:

Telephone lines and exchanges having three thousand (3,000) or less paying subscribers within the limits of the City of Houston shall have the right to charge, for business or office connection, Three Dollars (\$3.00) per month; for residence, Two Dollars (\$2.00) per month.

Party Lines: Business or office, Two Dollars (\$2.00) per month; residence, One Dollar (\$1.00) per month.

Telephone lines and exchanges having in excess of three thousand (3,000) paying subscribers within the limits of the City of Houston shall have the right to charge, for business or office connections, Five Dollars (\$5.00) per month; for residence, Two Dollars (\$2.00) per month.

Party Lines: Business or office, Three Dollars (\$3.00) per month; residence, One and 50/100 Dollars (\$1.50) per month.

Provided, that the rates above fixed are fixed for a reasonably efficient service, and in the event the service is not reasonably efficient, the subscriber or customer can satisfy his bill and the requirements of this section by paying or tendering to the person, firm, corporation or receiver operating or owning the telephone lines such pro-

portion of the rate fixed by law for the service as the service actually furnished bears to a reasonably efficient service.

In the event the service is not reasonably efficient, and the customer has paid in advance for the service at the rate fixed by this section, he can deduct an amount proportionate to the deficiency in the service from the rate for the next month, and the person, firm, corporation or receiver operating or owning the telephone line shall be bound in all cases to receive said sum of money and continue to furnish the service; provided, that the amount of money paid by the customer is proportionate to the service rendered.

1497

Article IV.

Telephones.

That every person, firm, association, corporation or receiver operating or owning telephone lines and exchanges in the City of Houston, Harris County, Texas, engaged in the business of furnishing connections and service to the citizens of the said City of Houston, is hereby required to file between January 1st and March 1st of each year a sworn annual report showing all property, real, personal and mixed, of said corporation or persons, on hand on said January 1st, and owned by said corporation or persons, and used in said telephone business in the year preceding said date and showing the gross income derived from the operation of said telephone business in the City of Houston for the year preceding said January 1st, and showing the actual expense of operation and maintenance of said telephone system in the City of Houston for the year preceding said January 1st; and furnishing such other information as may be by this chapter specifically required.

The report in so far as it undertakes to state the property of said public service, business and the value of same, shall not be sufficient or a compliance with this article unless it sets forth a detail
1498 list and description of all property, real, personal and mixed, owned by said person, firm or corporation, in Houston, Texas, on January 1st, of each year; and also of all property in Houston, Texas, actually used in the telephone business in said city in the year preceding said January 1st, together with a statement of the value of each item of property set opposite the same in said list.

If any of such listed property is not or has not been during the year preceding said January 1st, actually used in said telephone business, that fact shall be stated in the report.

The report shall state also with reference to each item of property and assets, the condition of same on said January 1st, and the extent, if any, to which same is depreciated in value from age, use or other causes. The report shall also state, with reference to each item of property the estimated cost of reproducing the same new on the date, January 1st.

Said report of property and assets and value thereof, situated in Houston, shall specifically state whether any of the property listed is situated in Houston Heights or Brunner, or elsewhere without the

corporate limits of the City of Houston and within two (2) miles thereof, and is used and operated in connection with the 1499 Houston offices, and shall state separately the value and the degree of depreciation and cost of production of each of said items of property operated in connection with the Houston office and situated in Brunner, Houston Heights, or outside the corporate limits of the city and within two (2) miles of said limits.

Said list of property shall specifically set forth among other property:

First. All real estate or lease-hold interests in land, describing same, owned by said person or corporation engaged in said telephone business.

Second. The number of linear feet of conduits, stating the location of same within the city, and from what beginning point to what ending point they extend. By a linear foot of conduit is meant a foot in length of same, whether same contains one duct or many ducts; and said statement shall show as to each conduit, how many ducts it contains and how many wires are contained in each duct. And said report shall show in what year the said conduits were constructed and shall further show how many linear feet of conduits are situated within the limits of the City of Houston, and how many linear feet of conduits, if any, are situated outside of the limits 1500 of the city within two (2) miles thereof, and what part of same, describing same, were constructed in the year preceding said January 1st. And said report shall be accompanied by a map or sketch representing plainly on same the location of said telephone conduits.

Third. Said report shall also show the number of telephone poles owned and operated by said person, firm or corporation on January 1st, and during the year preceding, and shall be accompanied by a map or plat showing the location and position of the various lines of poles and of each pole, and the report shall indicate how many of said poles are situated within the corporate limits of the City of Houston and how many of the same are situated outside of the corporate limits of the city, and within two (2) miles thereof, and shall state specifically how many of the poles listed were erected in the year preceding said date of January 1st; and said report shall show the number of wires strung on said poles.

In addition to the other matters required by this report, same shall state the estimated value of a telephone pole, not inserted in the ground, and the cost and expense of inserting a pole in the ground, and the estimated value of each mile of single tele- 1501 phone wire, and the estimated cost and expense of inserting said mile of wire in a conduit, and of stringing same on poles, and the estimated expense of constructing one thousand (1,000) feet of conduits, not including in said last estimate the cost of inserting the wires therein.

And the report shall state specifically with reference to each pole

and line of wire *what* its condition with reference to being in a state of repair.

Fourth. Said list of property shall also include a specific list of each telephone exchange owned by said person, firm or corporation, stating whether the building and property on which same is situated is owned by said person, firm or corporation, or is rented, and giving a specific list of all switch boards and of all other property of said telephone business, such as telephones and all appliances and appurtenances used in connection with said telephone business, and shall state specifically with reference to all property, whether same was purchased or constructed in the year preceding the said date of January 1st.

Fifth. Said person, firm or corporation shall list any other property or assets (used in its telephone business in Houston) which it may own, and state the value and other required information in reference to same, if they believe that such property or assets and its value should be considered in fixing or regulating the rates to be charged for said telephone service.

1503 *An Ordinance Authorizing Consolidation and Merger of the Houston Telephone Exchange of the Southwestern Telegraph and Telephone Company and the Telephone Exchange of the Houston Home Telephone Company, Prescribing the Terms and Conditions of Such Consolidation and Merger, and Declaring an Emergency.*

Be it ordained by the city council of the city of Houston:

Section 1. By authority of Article 1236a—Vernon's Sayles' Texas Civil Statutes, 1914, (Acts 1913, page 92, sec. 2) consents and authority is hereby granted by the City of Houston to the Southwestern Telegraph & Telephone Company to take over, consolidate with, and merge into its Houston Telephone Exchange, the exchange and all property of the Houston Home Telephone Company, upon the following terms and conditions, to-wit:

(a) The Houston Home Telephone Company shall, within thirty (30) days after this ordinance becomes effective, pay all back taxes due, including the tax upon income; the taxes of 1915, shall be assumed by the Southwestern Telegraph & Telephone Company.

(b) The Southwestern Telegraph and Telephone Company will give connection through its Houston exchange to its subscribers' stations in the City of Houston to all toll lines now connected to the Houston Home Telephone Company's Houston Exchange, and will give toll lines connection to any toll lines hereafter constructed to the City of Houston reaching and serving cities or towns in Texas not reached or served by the toll lines of the Southwestern or its connecting companies, so that direct telephonic communication may be had between the users of such toll lines and the *the* sub-

1504 scribers' stations of the Southwestern Company in the City of Houston. Said connection and service shall be had upon reasonable rates of charge and under reasonable rules and regulations to be fixed and prescribed by said Southwestern Telegraph and Telephone Company, which rules and regulations shall be subject to the approval of the City Council.

(c) Said Southwestern Telegraph and Telephone Company agrees as long as it operates a telephone system in Houston to maintain telephone service in said City, first class in all respects, and to assist therein, it agrees to pay the salary of a telephone inspector for the City, not to exceed One Hundred Dollars (\$100.00) per month; said inspector shall be an experienced and practical telephone man, and shall be appointed and may be removed by the Mayor of the City. It shall be the duty of such inspector to receive complaints as to telephone service and to investigate same, and to assist in every way possible to maintain excellence of telephone service. Any investigation made by said inspector shall be made through the regular lines of organization of the Company, so as not to interfere with the maintenance and operation of the service.

(d) Said Southwestern Telegraph and Telephone Company shall furnish the consolidation service at the same rates now charged to its subscribers in the City of Houston, and in addition to the service now aforesaid to the people of Houston, it shall furnish a measured service residence rate at One Dollar and fifty cents (\$1.50) per month, which rate shall entitle the subscriber to sixty outgoing calls per month; all additional calls to be paid for by the subscribers at three cents (3) each; no charge to be made for incoming calls.

1505 (e) The Southwestern Telegraph and Telephone Company agree- that it will not increase rates as at present charged by it for the service in the City of Houston, unless it appears upon a satisfactory showing to be made before the City Council of the City of Houston, of all receipts and disbursements, and said showing must, in order to justify a warrant a raise in the rates, reasonable prove that there exists a necessity for an increase of charge in order that said company may earn a fair return upon its capital actually invested in the Houston plant. And it is agreed for a term of five years from this date, that a fair return upon said capital and investment is not less than seven nor more than eight per cent.

(f) The Southwestern Telegraph and Telephone Company, and the Houston Home Telephone Company, either or both, shall within ten (10) days after the written acceptance of the terms of this ordinance, pay into the Treasury of the City of Houston, the sum of Eighty Thousand Dollars (\$80,000.00) Which sum it is agreed is the full value of all and every interest of the City of Houston of every kind or nature whatever, presents, remote or contingent, in the plant and property of said Houston Home Telegraph Company; and especially in the underground system of said Houston Home Telephone Company; and upon payment of said sum, the Houston Home Telephone Company may convey said underground system

into its entirety to the Southwestern Telegraph and Telephone Company, free and clear of any and every claim of the City of Houston against the same, except its valid lien for taxes, if any are then unpaid; and said underground system and all of the property of the said Houston Home Telephone Company may thereupon be taken over and be owned, disposed of or used and maintained by said Southwestern Telegraph and Telephone Company, as a part of its Houston plant, free from any limitation or obligation impressed upon it by the franchise of the said Houston Home Telephone Company.

1506 (g) The Franchise of the Houston Home Telephone Company entitled:

"An Ordinance granting to — S. Slusher and F. H. Read, and their associates and assigns the right, franchise and privilege to build and maintain and operate a system of automatic telephone exchanges in the City of Houston, and granting the right of way and other privileges of the Streets of the City of Houston," passed and approved July 8, 1907, is now repealed, the Houston Home Telephone Company, the owner of said ordinance by assignment agreeing and consenting thereto.

(h) Within thirty (30) days after this ordinance takes effect, the Southwestern Telegraph and Telephone Company, and the Houston Home Telephone Company, shall each file with the Mayor of the City of Houston their written acceptance of the terms and conditions of this ordinance, and within ten (10) days thereafter, the consideration nominated in paragraph "F" hereof, shall be paid into the City Treasury unless the time shall be extended by the City Council for good reasons shown, and upon such payments and the payment of the taxes due the City by the said Houston Home Telephone —, said consolidation and merger may be effected and completed in all respects.

(i) The provision of this franchise granted by the City of Houston to the Southwestern Telegraph and Telephone Company relating to the adjustment of rates are hereby expressly reserved and made applicable to this ordinance.

(j) That there may be interruption in the telephone service of present subscribers to the Houston Home Telephone Company, the Southwestern Telegraph & Telephone Company agrees that it will not discontinue the service of the Houston Home Telephone Company to any subscriber thereto, until reasonable opportunity
1507 has been afforded said subscribers to have installed and in operation, the telephone service of said Southwestern Telegraph and Telephone Company.

Section 2. There being a public emergency requiring that this ordinance be passed finally on the date of its introduction and the Mayor having in writing declared the existence of such emergency and requested such passage, the 10th day of May, A. D. 1915, and

shall take effect immediately upon its passage and approval by the Mayor.

Approved this 10th day of May, A. D. 1915.

BEN CAMPBELL,
Mayor of the City of Houston.

1508 C. A. GATES, a witness for the plaintiff, testified as follows:

Cross-examination:

Q. (Interrupting.) Mr. Gates, I am asking you about when you got this charter?

A. I didn't get out the charter.

Q. How long has this corporation been in existence?

A. What charter are you talking about?

Q. The charter for the Southwestern Telegraph & Telephone Company?

A. I wasn't talking about the Southwestern Company; I don't know the exact date of the charter of the Southwestern Company.

Q. But we will finally come back to what the cost of establishing business was in this plant and not an imaginary one.

A. My estimate doesn't refer to the cost of establishing business of the Southwestern Company.

Q. Don't you know that in the old days, before the Interstate Commerce Commission began prescribing the rules, that a great deal of this character of expense was paid out of operation?

A. That hasn't anything to do with the set-up.

Q. I am asking you if that isn't a fact?

A. Yes, it is a fact, but the accounting was different in earlier days than what it is today, but that does not enter into the reproduction appraisal that I have made here.

1509 Q. You may not think so, but I might. That is true, then, that in the old days, in these cases, in a great many of these things—I mean a great many of these things were paid for in operating expenses.

A. Just what expenses?

Q. I asked you and you thought, that is, you said you thought that the expense of getting the charter, and fees paid the attorneys——

A. I never said that the expense of getting the charter was paid for in operating expenses; I said that there was a difference in the accounting method.

Q. I am asking you if it isn't a fact that under the old accounting method that they would be charged up to operating expenses and paid out of earnings, a great deal of these things set up now as the cost of construction?

A. The cost of construction and the cost of establishing business—there undoubtedly were some items that were charged up in that manner, but I do not believe that the cost of obtaining the charter was charged to operating expense; I don't think it was.

Q. Now, let's see; the next is the cost of establishing business,—is the cost of selling the service. Now, you say from the city—just a minute, Mr. Stenographer. Well, Mr. Gates, under page 3—on page 228, numbered page 3 up above, and 228 below, you are talking about there—what are you talking about there? Are you talking about this plant, or an imaginary plant?

1510 A. I am talking about the cost of establishing business in the city of Houston if you were to build a new exchange here. This is under the set-up as I have supposed right along, just exactly the same proposition as for legal expenses in getting a charter and conducting the legal affairs of the company that we were to set up and not the Southwestern.

Q. Now, you say that in 1915, 1916, 1917 and 1918 that you incurred such costs for selling service?

A. Yes, sir.

Q. What was that cost charged to?

A. Charged to an account known as "Advertising and Canvassing."

Q. To operating expenses?

A. Yes, sir.

Q. Charged to operating expenses?

A. Charged to operating expenses.

1511 A. E. SCOTT, a witness for the plaintiff, testified as follows:

Cross-examination.

Questions by Mr. Howard:

Q. As I get you, prior to 1913, Engineering and Superintendence and Maintenance, and Law Expense, Injury and Damages, and things like that were charged to operation?

A. Prior to 1910 all those items—take the item of Interest During Construction, wasn't considered at all.

Q. Not as Capital?

A. We didn't treat it at all.

Q. Didn't treat it at all?

A. No, sir.

Q. You just let that go, disregarded it as insignificant?

A. It was part of the expense.

Q. Did you take care of it in any manner?

A. Yes, sir, it would be charged to yearly expense account.

Q. What would that be paid out of?

A. General operating expense.

1512 In the District Court of the United States for the Southern District of Texas, Houston Division.

In Equity.

No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Plaintiff,

vs.

THE CITY OF HOUSTON et al., Defendants.

Præcipe.

To the clerk of said court:

The Clerk will please incorporate into the transcript of the record on appeal the following portions of the record which Plaintiff, Southwestern Bell Telephone Company, submits for the consideration of the United States Supreme Court in connection with the appeal of the Defendants herein:

(1) Defendants' Waiver of Notice and Service to filing by Southwestern Bell Telephone Company of original Complaint in nature of a Supplemental Complaint, filed July 20, 1920.

(2) Motion of Southwestern Bell Telephone Company for permission to file Original Complaint in nature of a Supplemental Complaint, filed July 20, 1920.

1513 (3) Order Permitting the Filing of Original Complaint in nature of a Supplemental Complaint of Southwestern Bell Telephone Company, filed July 20, 1920.

(4) Original Complaint in nature of a Supplemental Complaint of Southwestern Bell Telephone Company, filed July 20, 1920.

(5) Petition of Complainant for Extension of Time to file *Præcipe*, filed November 29, 1920.

(6) Order of Court Enlarging Time for Complainant to file *Præcipe*, filed November 29, 1920.

(7) Complainant's Assignment of Errors, filed December 17, 1920.

(8) Complainant's Petition for Appeal and Order thereon, filed December 17, 1920.

(9) Appeal Bond of Southwestern Bell Telephone Company, filed December 28, 1920.

(10) Citation (to Defendants) on Appeal and Waiver of Service thereon, filed January 4, 1921.

(11) Agreement as to Extension of Time for filing of Præcipe by Appellee, filed January 13, 1921.

(12) Petition of Complainant for Further Extension of 1514 Time for Præcipe, filed January 15, 1921.

(13) Order of Court granting Southwestern Bell Telephone Company a Further Extension of Time for filing Præcipe, filed January 18, 1921.

(14) Petition of Southwestern Bell Telephone Company for Extension of Time to prepare Transcript of Record and Docket Cause in the United States Supreme Court, filed January 18, 1921.

(15) Order of the United States District Court granting Extension of Time to Southwestern Bell Telephone Company for preparation of Transcript of Record on Appeal and Docketing Cause in the Supreme Court of the United States, filed January 18, 1921.

(16) Joint Application of Plaintiff and Defendants for Order Authorizing Original Exhibits to be forwarded to the Clerk of the United States Supreme Court, filed January 17, 1921.

(17) Order of Court granting Joint Application of Plaintiff and Defendants for Order Authorizing Original Exhibits to be forwarded to the Clerk of the United States Supreme Court, filed January 20, 1921.

(18) Agreement of Counsel, filed January 20, 1921.

(19) Order granting leave to Incorporate Portions of the Testimony in the Record in Question and Answer form, filed 1515 January 22, 1921.

(20) The following Exhibits and Abstract of Exhibits filed herewith

Plaintiff's Exhibits numbers nine (9) and eleven (11), A. E. Scott, witness; pages 1425-1427, Statement of Evidence.

Plaintiff's Exhibits numbered twenty-four (24) to twenty-six (26), inclusive, and one hundred seventy-six (176), F. M. Hoag, witness; pages 1428 to 1434, Statement of Evidence.

Plaintiff's Exhibit No. 35, H. P. Topping, witness; pages 1435 and 1436, Statement of Evidence.

Plaintiff's Exhibits numbered forty-seven (47) to fifty-three (53), inclusive, H. B. Copes, witness; pages 1437 to 1443, Statement of Evidence.

Plaintiff's Exhibits numbered sixty-one (61) to one hundred twenty-one (121), inclusive, F. L. Rhodes, witness; pages 1444 to 1452, Statement of Evidence.

Plaintiff's Exhibits numbered one hundred twenty-two (122) to one hundred thirty-five (135), inclusive, Robert F. Estabrook, witness; pages 1453 to 1457, Statement of Evidence.

Plaintiff's Exhibits numbered one hundred thirty-six (136) to one hundred forty (140), inclusive, H. Blair-Smith, witness; pages 1458 to 1460, Statement of Evidence.

Plaintiff's Exhibits numbered one hundred forty-one (141) to one hundred forty-five (145), inclusive, E. V. Cox, witness; 1516 pages 1461 to 1536, Statement of Evidence.

Plaintiff's Exhibits numbered one hundred forty-six (146) to one hundred sixty-two (162), inclusive, W. O. Pennell, witness; pages 1537 to 1639, Statement of Evidence.

Plaintiff's Exhibit No. 163, C. A. Gates, witness; page 1640, Statement of Evidence.

Plaintiff, Southwestern Bell Telephone Company's Statement of Evidence in connection with the appeal of the Defendants, The City of Houston, et al., numbered as pages 1424 to 2252, inclusive, and filed herewith.

D. A. FRANK,
JOSEPH D. FRANK,
WM. H. DULS,

*Solicitors for Plaintiff,
Southwestern Bell Telephone Company.*

1517 In the District Court of the United States for the Southern District of Texas, Houston Division.

In Equity.

No. 108.

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY

vs.

CITY OF HOUSTON et al.

We consent to the filing of the attached Original Complaint in the nature of a supplemental complaint in the above cause, and hereby waive notice of service and other formalities which may be required by the rules of law or equity.

W. J. HOWARD,

Solicitors for Defendants.

1518 In the District Court of the United States for the Southern District of Texas, Houston Division.

In Equity.

No. 108.

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY

VS.

CITY OF HOUSTON et al.

Original Complaint in the Nature of a Supplemental Complaint of Southwestern Bell Telephone Company.

To said Honorable Court:

Now comes Southwestern Bell Telephone Company, hereinafter styled —, Complainant, and represents unto the Court as follows:

1. That it is a corporation organized under the laws of the State of Missouri, and was granted a permit to do business in The State of Texas on April 19th, 1920.

2. That for a valuable consideration, during the month of April, 1920, it purchased all of the telegraph and telephone property of the Southwestern Telegraph and Telephone Company in the State of Texas, and particularly the local telephone exchange and all of the telephone property in the City of Houston, Texas, by reason of which it became the legal and equitable owner thereof, and succeeded to all of the rights of The Southwestern Telegraph and Telephone Company.

1519 3. That on October 22nd, 1909, the City of Houston, respondent in the above styled case, passed an ordinance prescribing certain telephone rates to be charged in the City of Houston; that in December, 1917, The Southwestern Telegraph and Telephone Company, then owner of the telephone exchange in said City, applied to the City Council for an increase in the rates prescribed by the City ordinance of 1909, said rates prescribed in said ordinance having become wholly unremunerative and confiscatory; that permission to increase said rates was not granted; that on August 1st, 1918, the property of The Southwestern Telegraph and Telephone Company in said Houston exchange was taken over by the United States Government and placed under the supervision of the Postmaster General of the United States; that thereafter the Postmaster General ordered said ordinance rates of 1909 increased, and that said rates were increased on February 1st, 1919; that the City filed an application in the State court for an injunction to restrain the enforcement of said increased rates, and that this Court, the cause having been removed to this Court, upheld the Government rates, and upon

application of said The Southwestern Telegraph and Telephone Company issued an injunction against the City of Houston interfering with the charging and collecting of the increased rates during the period of Government control and operation; that on August 1st, 1919, the United States Government relinquished the control and operation of the property of the said The Southwestern Telegraph and Telephone Company, and that on August 7th, 1919, the Mayor of the City of Houston notified said The Southwestern Telegraph and Telephone Company that in accordance with the action of the City Council the City would insist upon the enforcement of the ordinance rates of 1909; that The Southwestern Telegraph and Telephone Company then applied to this Court for an injunction to restrain the City from interfering with the continued enforcement of the increased rates, alleging that ordinance rates of 1909 confiscated its property in its Houston exchange; that a hearing was had, and at the conclusion of the hearing the temporary injunction prayed for was denied and the case was referred to a Master.

4. That said ordinance of October 22nd, 1909, is general in its nature and prescribed confiscatory rates to be charged by telephone companies, and applies to all telephone companies doing business in the City of Houston, and is especially applicable to and will be enforced against Southwestern Bell Telephone Company, as the successor of The Southwestern Telegraph and Telephone Company in the ownership and operation of the local telephone exchange system in the City of Houston.

5. Southwestern Bell Telephone Company says that by virtue of its purchase of the property of The Southwestern Telegraph and Telephone Company in the City of Houston, all of the allegations of fact and of law contained in the Original Bill of Complaint of The Southwestern Telegraph and Telephone Company, except as otherwise appears herein, are applicable to and are hereby adopted by Southwestern Bell Telephone Company as its own, as fully and completely as if said Original Bill of Complaint had been originally prepared and filed by it.

Wherefore, premises considered, Southwestern Bell Telephone Company prays that it may be substituted for and stand in the place of The Southwestern Telegraph and Telephone Company, the Complainant in the original suit, and that it may have the benefits of said suit, and of the orders, decrees and proceedings therein, and that this original complaint be taken as supplemental to said original bill of complaint filed by The Southwestern Telegraph and Telephone Company, and that Southwestern Bell Telephone Company be granted the relief prayed for in said original bill of complaint in all respects, as though the original bill of complaint had been prepared and filed by it.

_____,
_____,
_____,
*Solicitors for Southwestern Bell Telephone
Company, Plaintiff.*

1522 STATE OF TEXAS,
 County of Dallas:

Before me, the undersigned authority, on this day personally appeared E. F. Carter, known to me to be a reputable person, who upon oath states that he was formerly General Manager of The Southwestern Telegraph and Telephone Company for the State of Texas, and that he is now General Manager of Southwestern Bell Telephone Company for the State of Texas; that he has read the foregoing instrument and that the facts and matters stated therein are true and correct.

Subscribed and sworn to before me this the 2nd day of June, A. D., 1920.

Notary Public in and for Dallas County, Texas.

(Endorsed on back:) No. 108—In Equity. S. W. Teleg. & Tel. Co. vs. City of Houston, et al. Defendant's Waiver of Notice and Service to filing by S. W. Bell Tel. Co. of Original Complaint in nature of a Supplemental Complaint. Filed July 20, 1920. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

1523 In the District Court of the United States for the Southern District of Texas, Houston Division.

In Equity.

No. 108.

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY

vs.

CITY OF HOUSTON et al.

Motion of Southwestern Bell Telephone Company for Permission to File Its Original Complaint in the Nature of a Supplemental Complaint.

To said honorable court:

Now comes Southwestern Bell Telephone Company, and asks leave of the Court to file in this case its Original Complaint in the nature of a Supplemental Complaint, a copy of which is hereto attached.

D. A. FRANK,
J. D. FRANK,
WM. H. DULS,

Solicitors for Southwestern Bell Telephone Company.

1524 In the District Court of the United States for the Southern District of Texas, Houston Division.

In Equity.

No. 108.

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY

VS.

CITY OF HOUSTON et al.

Original Complaint in the Nature of a Supplemental Complaint of Southwestern Bell Telephone Company.

To said honorable court:

Now comes Southwestern Bell Telephone Company, hereinafter styled complainant, and represents unto the Court as follows:

1. That it is a corporation organized under the laws of the State of Missouri, and as granted a permit to do business in the State of Texas on April 19th, 1920.

2. That for a valuable consideration, during the month of April, 1920, it purchased all of the telegraph and telephone property of the Southwestern Telegraph and Telephone Company in the State of Texas, and particularly the local telephone exchange and all of the telephone property in the City of Houston, Texas, by reason of which it became the legal and equitable owner thereof, and succeeded to all of the rights of the Southwestern Telegraph and Telephone Company.

3. That on October 22nd, 1909, the City of Houston, respondent in the above styled case, passed an ordinance prescribing certain telephone rates to be charged in the City of Houston; that in December, 1917, the Southwestern Telegraph and Telephone Company, then owner of the telephone exchange in said City, applied to the City Council for an increase in the rates prescribed by the ordinance of 1909, said rates prescribed in said ordinance having become wholly unremunerative and confiscatory; that permission to increase said rates was not granted; that on August 1st, 1918, the property of the Southwestern Telegraph and Telephone Company in said Houston exchange was taken over by the United States Government and placed under the supervision of the Postmaster General of the United States; that thereafter the Postmaster General ordered said ordinance rates of 1909 increased, and that said rates were increased on February 1st, 1919; that the City filed an application in the State court for an injunction to restrain the enforcement of said increased rates, and that this Court, the cause having been removed to this Court, upheld the Government rates, and upon application of said The Southwestern Telegraph and Telephone

Company issued an injunction against the City of Houston interfering with the charging and collection of the increased rates during the period of Government control and operation; that on August 1st, 1919, the United States Government relinquished the control and operation of the property of the said The Southwestern Telegraph and Telephone Company, and that on August 7th, 1919, the Mayor of the City of Houston notified said The Southwestern Telegraph and Telephone Company that in accordance with the action of the City Council of the City, the City would insist upon the enforcement of 1526 the ordinance rates of 1909; that The Southwestern Telegraph and Telephone Company then applied to this Court for an injunction to restrain the City from interfering with the continued enforcement of the increased rates, alleging that the ordinance rates of 1909 confiscated its property in its Houston exchange; that a hearing was had and at the conclusion of the hearing the temporary injunction prayed for was denied and the case was referred to a Master.

4. That said ordinance of October 22nd, 1909, is general in its nature and prescribed confiscatory rates to be charged by telephone companies, and applies to all telephone companies doing business in the City of Houston, and is especially applicable to, and will be enforced against, Southwestern Bell Telephone Company, as the successor of The Southwestern Telegraph and Telephone Company in the ownership and operation of the local telephone exchange system in the City of Houston.

5. Southwestern Bell Telephone Company says that by virtue of its purchase of the property of The Southwestern Telegraph and Telephone Company in the City of Houston, all of the allegations of fact and of law contained in the original Bill of Complaint of The Southwestern Telegraph and Telephone Company, except as otherwise appears herein, are applicable to and are hereby adopted by the Southwestern Bell Telephone Company as its own, as fully and completely as if said Original Bill of Complaint had been originally prepared and filed by it.

Wherefore, premises considered, Southwestern Bell Telephone Company prays that it may be substituted for and stand in 1527 the place of The Southwestern Telegraph and Telephone Company, the Complainant in the original suit, and that it may have the benefit of said suit, and of the orders, decrees and proceedings therein, and that this original Complaint be taken as supplemental to said Original Bill of Complaint filed by The Southwestern Telegraph and Telephone Company, and that Southwestern Bell Telephone Company be granted the relief prayed for in said Original Bill of Complaint in all respects as though the Original Bill of Complaint had been prepared and filed by it.

_____,
_____,
_____,

*Solicitors for Southwestern Bell
Telephone Company, Plaintiff.*

1528 STATE OF TEXAS,
County of Dallas:

Before me, the undersigned authority, on this day personally appeared E. F. Carter, known to me to be a reputable person, who upon oath states that he was formerly General Manager of The Southwestern Telegraph and Telephone Company for the State of Texas, and that he is now General Manager of Southwestern Bell Telephone Company for the State of Texas; that he has read the foregoing instrument and that the facts and matters stated therein are correct.

Subscribed and sworn to before me this the 2nd day of June, A. D., 1920.

Notary Public in and for Dallas County, Texas.

(Endorsed on Back:) No. 108—In Equity. S. W. Teleg. & Tel. Co. vs. City of Houston et al. Motion of S. W. Bell Tel. Co. for permission to file Original Complaint, in nature of a Supplemental Complaint. Filed July 20, 1920. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

1529 In the District Court of the United States for the Southern District of Texas, Houston Division.

In Equity.

No. 108.

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY

vs.

CITY OF HOUSTON et al.

This case coming on to be heard on motion of Southwestern Bell Telephone Company for permission to file its Original Complaint in the nature of a Supplemental Complaint, and it appearing that Defendants have waived notice and service, and the Court being fully advised of the causes and grounds upon which permission to file said Original Complaint, in the nature of a Supplemental Complaint, is sought, it is hereby ordered, adjudged and decreed that the motion be granted, and that Southwestern Bell Telephone Company be substituted for and in the place of The Southwestern Telegraph and Telephone Company, and that Southwestern Bell Telephone Company shall be subject to and have the benefit of all orders, decrees and judgments heretofore and hereafter made by this Court, and that the name of Southwestern Bell Telephone Company shall, in all subsequent orders and proceedings, be used in the place of The Southwestern Telegraph and Telephone Company, and the

Clerk of the Court is hereby ordered to file the same as of the date of this order as the Original Complaint in the nature of a Supplemental Complaint of said Southwestern Bell Telephone Company in the cause.

1530

GEORGE WHITFIELD JACK,

Judge.

Dated July 20th, 1920.

(Endorsed on back:) No. 108—In Equity. S. W. Teleg. & Tel. Co. vs. City of Houston et al. Order Permitting filing of Original Complaint in the nature of a Supplemental Complaint, of S. W. Bell Tel. Co. Filed July 20th, 1920. L. C. Masterson, Clerk; by J. L. Sexton, Deputy.

1531 In the District Court of the United States for the Southern District of Texas, Houston Division.

In Equity.

No. 108.

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY

vs.

CITY OF HOUSTON et al.

Original Complaint in the Nature of a Supplemental Complaint of Southwestern Bell Telephone Company.

To said honorable court:

Now comes Southwestern Bell Telephone Company, hereinafter styled Complainant, and represents unto the Court as follows:

1. That it is a corporation organized under the laws of the State of Missouri, and was granted a permit to do business in the State of Texas on April 19th, 1920.

2. That for a valuable consideration, during the month of April, 1920, it purchased all of the telegraph and telephone property of the Southwestern Telegraph and Telephone Company in the State of Texas, and particularly the local telephone exchange and all of the telephone property in the City of Houston, Texas, by reason of which it became the legal and equitable owner thereof, and succeeded to all of the rights of The Southwestern Telegraph and Telephone Company.

1532 3. That on October 22nd, 1909, the City of Houston, respondent in the above styled case, passed an ordinance prescribing certain telephone rates to be charged in the City of Houston; that in December, 1917, the Southwestern Telegraph and Telephone Company, then owner of the telephone exchange in said

City, applied to the City Council for an increase in the rates prescribed in the ordinance of 1909, said rates prescribed in said ordinance having become wholly unremunerative and confiscatory; that permission to increase said rates was not granted; that on August 1st, 1918, the property of The Southwestern Telegraph and Telephone Company in said Houston exchange was taken over by the United States Government and placed under the supervision of the Postmaster General of the United States; that thereafter the Postmaster General ordered said ordinance rates of 1909 increased, and that said rates were increased on February 1st, 1919; that the City filed an application in the State court for an injunction to restrain the enforcement of said increased rates, and that this Court, the cause having been removed to this Court, upheld the Government rates, and upon application of said The Southwestern Telegraph and Telephone Company issued an injunction against the City of Houston interfering with the charging and collecting of the increased rates during the period of Government control and operation; that on August 1st, 1919, the United States Government relinquished the control and operation of the property of the said The Southwestern Telegraph and Telephone Company, and that on August 7th, 1919, the Mayor of the City of Houston notified the said The Southwestern Telegraph and Telephone Company that in
1533 accordance with the action of the City Council the City would insist upon the enforcement of the ordinance rates of 1909; that The Southwestern Telegraph and Telephone Company then applied to this Court for an injunction to restrain the City from interfering with the continued enforcement of the increased rates, alleging that the ordinance rates of 1909 confiscated its property in its Houston exchange; that a hearing was had and at the conclusion of the hearing the temporary injunction prayed for was denied and the case was referred to a Master.

4. That said ordinance of October 22nd, 1909, is general in its nature and prescribed confiscatory rates to be charged by telephone companies, and applies to all telephone companies doing business in the City of Houston, and is especially applicable to, and will be enforced against, Southwestern Bell Telephone Company, as the successor of The Southwestern Telegraph and Telephone Company in the ownership and operation of the local telephone exchange system in the City of Houston.

5. Southwestern Bell Telephone Company says that by virtue of its purchase of the property of The Southwestern Telegraph and Telephone Company in the City of Houston, all of the allegations of fact and of law contained in the original bill of complaint of The Southwestern Telegraph and Telephone Company, except as otherwise appears herein, are applicable to and are hereby adopted by Southwestern Bell Telephone Company as its own, as fully and
completely as if said original bill of complaint had been
1534 originally prepared and filed by it.

Wherefore, premises considered, Southwestern Bell Telephone Company prays that it may be substituted for and stand in the

place of The Southwestern Telegraph and Telephone Company, the complainant in the original suit, and that it may have the benefit of said suit, and of the orders, decrees and proceedings therein, and that this original bill of complaint be taken as supplemental to said original bill of complaint filed by The Southwestern Telegraph and Telephone Company, and that Southwestern Bell Telephone Company be granted the relief prayed for in said original bill of complaint in all respects as though the original bill of complaint had been prepared and filed by it.

D. A. FRANK,

J. D. FRANK,

WM. H. DULS,

*Solicitors for Southwestern Bell
Telephone Company, Plaintiff.*

1535 STATE OF TEXAS,
County of Dallas:

Before me, the undersigned authority, on this day personally appeared E. F. Carter, known to me to be a reputable person, who upon oath states that he was formerly General Manager of The Southwestern Telegraph and Telephone Company for the State of Texas, and that he is now General Manager of Southwestern Bell Telephone Company for the State of Texas; that he has read the foregoing instrument and that the facts and matters stated therein are true and correct.

Subscribed and sworn to before me this the 2nd day of June,
A. D., 1920.

_____,
*Notary Public in and for
Dallas County, Texas.*

(Endorsed on back:) No. 108—In Equity. The Southwestern Telegraph and Telephone Company vs. City of Houston et al. Original Complaint in the nature of a Supplemental Complaint of Southwestern Bell Telephone Company. Filed July 20th, 1920. L. C. Masterson, Clerk; by J. L. Sexton, Deputy.

1536 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

THE CITY OF HOUSTON et al., Defendants.

To said honorable court:

Now comes Southwestern Bell Telephone Company, Complainant in above numbered and entitled cause, and represents unto the Court as follows:

That on the 23rd day of November, 1920, the Defendants filed with the Clerk of this Court a precipe, setting forth the portions of the record to be incorporated into the transcript on the appeal of this case to the United States Supreme Court; that under Equity Rule No. 75, Complainant is required to file within ten days from the 23rd day of November, 1920, a precipe with the Clerk of the Court, indicating such additional portions of the record as it may desire to be incorporated into the transcript; that by reason of the voluminous record in this case, it is impossible for Complainant to properly review the portion of the record prepared by the Defendants and the rest of the evidence and numerous exhibits in the case for the purpose of determining the additional portion of the record which this Complainant may desire incorporated into the transcript.

Wherefore, premises considered, Complainant prays that the time within which it shall be required to file its precipe with the Clerk of this Court be enlarged for a period of 40 days.

JOSEPH D. FRANK,
Solicitor for Complainant.

(Endorsed on back:) Equity No. 108. Southwestern Bell Telephone Co., Complainant, vs. The City of Houston et al., Defendants. Petition of Complainant for extension of time to file precipe. Filed 29th day of November, 1920. L. C. Masterson, Clerk; by J. L. Sexton, Deputy.

1538 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, *Defendant,*

vs.

THE CITY OF HOUSTON et al., *Defendants.*

On this the 26th day of November, A. D., 1920, came on to be heard the petition and application of Southwestern Bell Telephone Company, Complainant in the above entitled and numbered cause, for the enlargement of the time in which to file its Precipe with the Clerk of this Court, indicating the additional portions of the record desired by the Complainant to be incorporated into the transcript upon the appeal of this case to the United States Supreme Court, and said application having been duly considered, and the Court having heretofore entered an order extending the time in which to prepare the transcript of the record in this cause and to docket said cause in the Supreme Court of the United States until February 13th, 1921, and it appearing that there is good cause for the enlargement of the time for the filing of Complainant's precipe, as prayed by the Complainant, it is considered by the Court, and so ordered, adjudged and decreed that the time in which to file Com-

plainant's precipe, setting forth the additional portions of the record to be incorporated into the transcript be and the same is 1539 hereby enlarged and extended for a period of 40 days.

GEO. WHITFIELD JACK,

*Judge of the District Court of the United States
Sitting in the Southern District of Texas.*

(Endorsed on back:) Equity No. 108. Southwestern Bell Telephone Company, Complainant, vs The City of Houston, et al., Defendants. Order of Court enlarging time for filing precipe by Complainant. Filed 29th day of November, 1920. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

1540 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

THE CITY OF HOUSTON et al., Defendants.

Assignment of Errors.

Now comes Southwestern Bell Telephone Company, Complainant in the above entitled and numbered cause, and files the following Assignment of Errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the decree made and entered by this Honorable Court on the 18th day of September, 1920:

I.

That the United States District Court for the Southern District of Texas, Houston Division, erred in failing to overrule in said decree Defendants' Fourth exception to the report of the Special Master and in sustaining Defendants' Fourth exception to said report in setting aside the finding by the Special Master, that there should be included in the valuation of Complainant's property the sum of \$765,000.00 for that element of value over and above 1541 the value of Complainant's physical property, existing by reason of the fact that Complainant has an assembled and established telephone plant in the City of Houston, doing business and earning money, such value being referred to as going concern value, and in holding that the Complainant's agreement in accepting the merger ordinance of 1915 that the sum on which it should receive a fair return should be the capital actually invested, estopped Complainant from claiming any return upon such element of value, because said contract and agreement is in violation of, and prohibited by Article I, Section 17, of the Constitution of the State of

Texas, prohibiting the granting of any irrevocable, or uncontrollable grant, franchise, privilege or immunity, and for the further reason that the Court took as the capital actually invested the cost of the property as shown by Complainant's books and, as shown by the evidence, said books, in compliance with the Uniform System of Accounts prescribed by the Interstate Commerce Commission, showed only the original cost of the physical property, and the order and finding of the Court in eliminating the item of going concern value fails to permit Complainant to earn any return whatsoever upon said element of value, and is contrary to and not supported by the law or the evidence.

II.

That the United States Court for the Southern District of Texas, Houston Division, erred in not overruling in said decree Defendants' Fifth exception to the report of the Special Master, and erred in sustaining Defendants' Fifth exception to the Report of the 1542 Special Master, and in setting aside the finding of the Special Master that the proper allowance for working capital to be included in the valuation of Complainant's property is \$238,000.00, and in substituting therefor the sum of \$120,000.00, or a reduction of \$118,000.00, because, as shown by the evidence, there was included in the amount allowed by the Special Master the value of certain telephone supplies and materials that are, and must be kept on hand by Complainant to take care of repairs and contingencies, and the Court's finding is based on Complainant's average monthly operating expenditures, which do not include the value of such supplies and materials, and the value of same are not included elsewhere in the report of the Special Master. And said order and decree is contrary to the law and the evidence.

III.

That the United States District Court for the Southern District of Texas, Houston Division, erred in failing to overrule in said decree Defendants' Eighth exception to the report of the Special Master and erred in sustaining Defendants' Eighth exception to the report of the Special Master in setting aside the finding of the Special Master that Complainant was entitled to set aside out of its revenue a sum equal to 6.33 per cent of \$5,500,000.00, the reproduction cost new of Complainant's physical property, as a reserve for depreciation, or \$348,150.00 for the year 1919, and substituting therefor the sum of \$289,380.00, the same being 6.33 per cent of \$4,571,567.00, the actual cost of the property, or a reduction in the amount to be set aside as a reserve for depreciation of \$58,770.00, because 1543 the Court used the original cost of the physical property as the basis for the reserve for depreciation, whereas the proper basis upon which the reserve for depreciation should be computed is the reproduction cost new of the physical property, and the finding of the Court is contrary to, and not supported by the evidence.

IV.

That the United States District Court for the Southern District of Texas, Houston Division, erred in failing to overrule in said decree Defendants' Tenth exception to the report of the Special Master, and in sustaining Defendants' Tenth exception to said report in setting aside the finding of the Special Master that anything less than a return of eight per cent upon the value of Complainant's property is confiscatory, and in holding that Complainant is only entitled to earn a fair return upon the capital actually expended by Complainant in the Houston plant, plus an allowance of \$120,000.00 for working capital, making a total of \$4,691,567.00 upon which the Complainant would be entitled to earn a fair return, instead of upon \$6,000,000.00, the fair value of the property, because the Court's application of the fair return to which Complainant is entitled, is, and should be, based on the fair value of the property, and under the finding and holding of the Court Complainant is being deprived of any return whatsoever upon the difference between the original cost of its physical property, plus an allowance of \$120,000.00 for working capital, and the fair value of the property, which difference amounts to \$1,308,433.00, and Complainant, by the finding 1544 of the Court and under the terms of the decree entered by the Court, is being deprived of an annual return of \$104,674.64, to which it is justly entitled, and the finding and holding of the Court is contrary to the law and the evidence.

V.

That the United States District Court for the Southern District of Texas, Houston Division, erred in failing to overrule in said decree Defendants' Eleventh exception to the report of the Special Master, and erred in sustaining Defendants' Eleventh exception to said report in setting aside the finding by the Special Master that Complainant is not estopped to claim more than a fair return upon the original cost of its property, and in holding that Complainant specifically waived the right to claim anything more than a fair return on its capital actually invested in its Houston plant, or the original cost of said property, by the terms of Subdivision "E" of Section "I" of the ordinance passed by the City of Houston in 1915, and accepted by the Southwestern Telegraph and Telephone Company, Complainant's predecessor, authorizing the consolidation of the properties of the Houston Home Telephone Company and The Southwestern Telegraph and Telephone Company in the City of Houston, and reading:

"The Southwestern Telegraph and Telephone Company agrees that it will not increase rates as at present charged by it for service in the City of Houston, unless it appears upon a satisfactory showing to be made before the City Council of the City of Houston, of all receipts and disbursements, and said showing must, in order to

1545 justify or warrant a raise in the rates, reasonably prove that there exists a necessity for an increase of charges in order that said Company may earn a fair return upon its capital actually invested in the Houston plant. And it is agreed for a term of five years from this date that a fair return upon said capital and investment is not less than 7 nor more than 8 per cent."

And in holding that said agreement constituted a contract binding upon the Complainant, because said contract, in so far as it attempts to fix the valuation upon which Complainant shall be entitled to earn a fair return is contrary to, in violation of, and expressly prohibited by Article "I," Section 17, of the Constitution of the State of Texas, which provides that "no irrevocable or uncontrollable grant of special privileges or immunities shall be made; and all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof." And said contract is void and unenforceable, because the Legislature of Texas has never delegated to the City of Houston, and under the provisions of Article "I," Section 17, of the Texas Constitution aforesaid, the Legislature of Texas can not delegate to the City of Houston the power to make said contract, because by the terms of said contract the City of Houston has attempted to and has abandoned its police power and governmental authority and duty to regulate the rates to be charged by Complainant, to the end that Complainant shall only be permitted to earn a fair return upon the value of its property, which value at different times may be either in excess of or below the capital actually invested, and the finding and holding of the Court is contrary to the law and the evidence.

1546

VI.

That the United States District Court for the Southern District of Texas, Houston Division, erred in providing in its decree of September 18th, 1920, that the Defendants are restrained and enjoined from interfering with the Plaintiff in charging and collecting such rates as will not produce more than a fair return upon its capital actually invested, instead of restraining and enjoining the Defendants from interfering with Plaintiff in charging and collecting such rates as will not produce more than a fair return upon the fair value of the Plaintiff's property, because Plaintiff's capital actually invested in the Houston plant, as determined by the Court, is \$1,308,433.00 less than the fair value of Plaintiff's property, and such order and decree of the Court has prevented and is preventing Plaintiff from earning any return whatsoever upon the said difference, and Plaintiff is entitled to earn a fair return upon the value of all of its property being used in furnishing telephone service to its telephone subscribers in the City of Houston, and said order and decree is contrary to the law and the evidence.

Wherefore, Complainant, Southwestern Bell Telephone Company, prays that said decree be reversed, and that said U. S. District Court

for the Southern District of Texas, Houston Division, be ordered to enter a decree reversing the decision of the lower Court in said cause.

1547 DAVID A. FRANK,
 JOSEPH D. FRANK,
 WILLIAM H. DULS,
 JOHN CHARLES HARRIS,
 Solicitors for Complainant,
 Southwestern Bell Telephone Company.

(Endorsed on back:) No. 108—In Equity. Southwestern Bell Telephone Co., Complainant, vs. The City of Houston et al. Complainant's Assignment of Errors. Filed 17th day of December, 1920. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

1548 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

THE CITY OF HOUSTON et al., Defendants.

To the Honorable George Whitfield Jack, District Judge:

The above named Complainant, Southwestern Bell Telephone Company, feeling aggrieved by the decree rendered and entered in the above entitled and numbered cause, entered on the 18th day of September, A. D., 1920, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and it prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and document upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, situated at Washington, D. C., under the rule of such Court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it be made.

1549 SOUTHWESTERN BELL TELEPHONE
 COMPANY,
By DAVID A. FRANK,
 JOSEPH D. FRANK,
 WILLIAM H. DULS,
 JOHN CHARLES HARRIS,
 Solicitors for Complainant.

Appeal allowed upon giving bond as required by law for the sum of \$1,000.00.

GEORGE WHITFIELD JACK,
 Judge.

(Endorsed on back:) Equity No. 108. Southwestern Bell Telephone Company, Complainant, vs. The City of Houston, et al., Defendants. In the District Court of the United States for the Southern District of Texas, Houston Division. Petition for Appeal and Order thereon. Filed 17th day of December, 1920. L. C. Master-son, Clerk, by J. L. Sexton, Deputy.

1550 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

THE CITY OF HOUSTON et al., Defendants.

Bond on Appeal.

Know all men by these presents, That we, Southwestern Bell Telephone Company, as principal, and E. M. Reardon, of Dallas, Dallas County, Texas, and F. H. Blankenship, of Dallas, Dallas County, Texas, as sureties, are held and firmly bound unto the Defendants, The City of Houston, and A. E. Amerman, Mayor of the City of Houston, Texas, Dan M. Moody, Tax and Land Commissioner of the City of Houston, H. A. Halverton, Fire Commissioner of the City of Houston, Matthew Drennan, Street and Bridge Commissioner of the City of Houston, David Fitzgerald, Water Commissioner of the City of Houston, Kenneth Krahf, City Attorney of the City of Houston, B. F. Louis, City Solicitor of the City of Houston, and Searcy Baker, Superintendent of Police of the City of Houston, jointly and severally, and to each and all of them, as their interest may appear, in the sum of \$1,000.00, lawful money of the

1551 United States, to be paid to them jointly and severally, and to their respective executors, administrators and successors; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors and administrators, by these presents.

Sealed with our seals and dated this the 24th day of December, A. D., 1920.

Whereas, the above named Complainant, Southwestern Bell Telephone Company, has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment of the District Court for the Southern District of Texas, Houston Division, in the above entitled cause.

Now, therefore, the condition of this obligation is such that if the above named Complainant, Southwestern Bell Telephone Company, shall prosecute its said appeal to effect and answer all costs,

if it fails to make good its plea, then this obligation shall be void; otherwise, to remain in full force and effect.

SOUTHWESTERN BELL TELEPHONE
COMPANY,

By JOSEPH D. FRANK,
*Its Agent and Attorney in Fact,
Principal.*

E. M. REARDON,
Surety.
F. H. BLANKENSHIP,
Surety.

Approved:

GEO. WHITFIELD JACK,
Judge.

1552 I, Louis C. Maynard, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that E. M. Reardon and F. H. Blankenship, whose signatures appear signed to the annexed bond, are, in my opinion, good and ample security for the amount therein specified; and that each of said sureties has property in the County of Dallas, State of Texas, subject to execution of a larger amount, and that if said bond was offered to me for approval, the same would be accepted and approved.

Witness my hand and seal of office at Dallas, Texas, this the 24th day of December, A. D., 1920.

[SEAL.]

LOUIS C. MAYNARD,
*Clerk United States District Court
for the Northern District of Texas.*

(Endorsed on back:) Equity No. 108. Southwestern Bell Telephone Company, Complainant, vs. The City of Houston, et al., Defendants. In the District Court of the United States for the Southern District of Texas, Houston Division. Appeal Bond of Southwestern Bell Telephone Company, Complainant. Filed 28th day of December, 1920. L. C. Masterson, Clerk, by M. Anderson, Deputy.

1553 In the District Court of the United States for the Southern District of Texas, Houston Division.

No. 108. Equity.

SOUTHWESTERN BELL TELEPHONE COMPANY

VS.

THE CITY OF HOUSTON et al.

THE UNITED STATES OF AMERICA, ss:

The President of the United States to the City of Houston; A. E. Amerman, Mayor of the City of Houston; Dan M. Moody, Tax and Land Commissioner of the City of Houston; H. A. Halverton, Fire Commissioner of the City of Houston; David Fitzgerald, Water Commissioner of the City of Houston; W. J. Howard, City Solicitor of the City of Houston, and Searcy Baker, Superintendent of Police of the City of Houston, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, D. C., within thirty days from the date hereof, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the District Court of the United States for the Southern District of Texas, Houston Division, from a final decree, filed and entered on the 18th day of September, 1920, in that certain suit, being in Equity No. 108, wherein Southwestern Bell
1554 Telephone Company, a corporation, is Appellant and you are Appellees, to show cause, if any there be, why the decree rendered against the said Appellant as in said order allowing appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 2nd day of Jan., 1921, and of the Independence of the United States the One Hundred and Forty-fifth Year.

GEO. WHITFIELD JACK,
*Acting United States District Judge
for the Southern District of Texas.*

Receipt of copy of this citation is hereby acknowledged and service thereof waived.

W. J. HOWARD,
Solicitor for Defendants.

(Endorsed on back:) No. 108—In Equity. The Southwestern Bell Telephone Company vs. City of Houston, et al. Citation on Appeal to Supreme Court of the United States, issued Jan. 2, 1921. Filed 4th day of January, 1921. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

1555 In the District Court of the United States for the Southern District of Texas, Houston Division.

In Equity.

No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY

vs.

CITY OF HOUSTON et al.

Agreement as to Extension of Time for Filing Appellees' Præcipe.

It is agreed by and between the parties hereto that the time for filing Appellee's Præcipe may be extended to February 1st, 1921, and that an order to that effect may be entered herein.

W. J. HOWARD,
Solicitor for Appellant.
JOSEPH D. FRANK,
Solicitor for Appellee.

(Endorsed on back:) No. 108—In Equity. Southwestern Bell Telephone Company vs. The City of Houston, et al. In the U. S. District Court for the Southern District of Texas, Houston Division. Agreement as to extension of time for filing Appellees' præcipe. Filed 13 day of Jan. 1921, L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

1556 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

CITY OF HOUSTON et al., Defendants

To said honorable court:

Now comes the Southwestern Bell Telephone Company, Complainant in the above numbered and styled cause, and represents to the Court as follows:

That it is and has been engaged in the work of preparing a Statement of the Evidence to be filed at the time of the filing of its præcipe for the purpose of indicating the portions of the record which the Southwestern Bell Telephone Company, as the Appellee, will desire incorporated into the record, in addition to that portion of the record

set out in Defendant's Statement of the Evidence filed herein on the 19th day of November, 1920;

That the complete record in this cause is voluminous, and the Complainant is now having transcribed the additional portion of the testimony which it desires incorporated into the transcript, and that it expects to have this work completed by February 1st, 1557 and the record in this cause does not have to be filed with the Clerk of the United States Supreme Court before February 13th, A. D., 1921.

Complainant further represents that when it files its Statement of the Evidence on February 1st, 1921, the same will be in such shape that the Clerk of this Court will not have any work to do, except to bind the same together and certify thereto.

Wherefore, premises considered, Complainant prays that the time for the filing of its praecipe indicating the additional portions of the testimony which it desires to be incorporated into the transcript may be further extended and enlarged until the 1st day of February, A. D., 1921.

D. A. FRANK,
JOSEPH D. FRANK,
WM. H. DULS,
*Solicitors for Complainant,
Southwestern Bell Telephone Company.*

(Endorsed on back:) No. 108—In Equity. Southwestern Bell Telephone Co. vs. the City of Houston, et al. In the District Court of the United States for the Southern District of Texas, Houston Division. Petition of Complainant for further extension of time for filing praecipe. Filed 15th day of Jan. 1921. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

1558 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

CITY OF HOUSTON et al., Defendants.

On this the 17th day of January, A. D., 1921, came on to be heard the Petition of the Complainant, Southwestern Bell Telephone Company, for a further extension and enlargement of the time for filing its praecipe, indicating the additional portions of the testimony which it will desire incorporated into the transcript, in addition to that portion of the record contained in the Defendants' Statement of the Evidence, filed herein on the 19th day of November, A. D., 1920, and said application having been duly considered, and it appearing that there is good cause for the enlargement and extension of said time, it

is considered by the Court, and so ordered, adjudged and decreed, that the time in which the Complainant, Southwestern Bell Telephone Company, shall be required to file its said *præcipe* is hereby enlarged and extended until the 1st day of February, A. D., 1921.

GEO. WHITFIELD JACK,

United States District Judge.

1559 (Endorsed on back:) No. 108—In Equity. Southwestern Bell Telephone Company vs. The City of Houston, et al. In the District Court of the United States for the Southern District of Texas, Houston Division. Order of Court granting Southwestern Bell Telephone Company a further extension of time for filing *præcipe*. Filed 18th day of January, 1921. L. C. Masterson, Clerk, by M. Anderson, Deputy.

1560 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE Co., Complainant,

vs.

CITY OF HOUSTON et al., Defendants.

Petition for an Extension and Enlargement of the Time Within Which to Prepare Transcript of the Record and to Docket Cause.

To said honorable court:

Now comes the Southwestern Bell Telephone Company, Complainant herein, and represents unto the Court as follows:

That both the Complainant and Defendants herein have filed Petitions for an appeal of this cause to the United States Supreme Court, which have been granted;

That heretofore, on the 2nd day of January, A. D., 1921, this Honorable Court issued a Citation to the Defendants, commanding them to appear in this cause at Washington, D. C., within *the* thirty days;

That the time for the Southwestern Bell Telephone Company to file its transcript of the record and docket this cause in the
1561 Supreme Court of the United States will expire on the 2nd day of February, A. D., 1921;

That heretofore, to-wit, on the 20th day of November, A. D., 1920, this Honorable Court, upon the application of the Defendants herein, granted said Defendants an enlargement and extension of the time within which to prepare their transcript of the record in the said cause, and to docket said cause in the Supreme Court of the United States, said order providing that said Defendants should have until the 13th day of February, A. D., 1921, within which to file a tran-

script of the record and docket said cause in the Supreme Court of the United States;

That under the equity rules one record is sufficient when both parties appeal directly to the Supreme Court of the United States, and only one record will be filed in connection with the appeal in this cause;

That your Petitioner is now engaged in preparing its record and expects to have the same prepared by the 1st day of February, A. D., 1921, and desires to have the time for the filing of its transcript of the record and the docketing of the said cause extended and enlarged to February 13th, A. D., 1921.

Wherefore, premises considered, your Petitioner prays for an enlargement and extension of the time within which to prepare its transcript of the record in this cause, and within which to docket this cause in the Supreme Court of the United States until the 1562 13th day of February, A. D., 1921.

D. A. FRANK,

JOSEPH D. FRANK,

WM. H. DULS,

Solicitors for Complainant,

Southwestern Bell Telephone Company.

(Endorsed on back:) No. 108—In Equity. Southwestern Bell Telephone Company vs. The City of Houston, et al. In the District Court of the United States for the Southern District of Texas, Houston Division. Petition of Southwestern Bell Telephone Co. for extension of time to prepare transcript of record and docket cause in the United States Supreme Court. Filed 18th day of January, 1921. L. C. Masterson, Clerk, by M. Anderson, Deputy.

1563 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

CITY OF HOUSTON et al., Defendants.

On this, the 17th day of January, A. D., 1921, came on to be heard the petition and application of Southwestern Bell Telephone Company, Complainant in the above entitled and numbered cause for an enlargement and extension of the time within which to prepare the transcript of the record in said cause, and docket the said cause in the Supreme Court of the United States; and said application having been duly considered, and it appearing that there is good cause for the enlargement and extension of said time, it is considered by the Court, and so ordered, adjudged and decreed, that the time within which to prepare and file the said transcript of the record and docket

the said cause in the Supreme Court of the United States be, and the same is hereby enlarged and extended until the 13th day of February, A. D., 1921.

GEO. WHITFIELD JACK,
United States District Judge.

1564 (Endorsed on Back:) No. 108—In Equity. Southwestern Bell Telephone Company vs. The City of Houston, et al. In the District Court of the United States for the Southern District of Texas, Houston Division. Order of the United States District Court granting extension of time to Southwestern Bell Telephone Company for preparation of transcript of record on appeal and docketing cause in the Supreme Court of the United States. Filed 18th day of January, A. D., 1921. L. C. Masterson, Clerk, by M. Anderson, Deputy.

1565 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

CITY OF HOUSTON et al., Defendants.

To said honorable court:

Now come Plaintiff and Defendants in the above numbered and styled cause, and represent unto the Court as follows:

That during the trial of this cause before the Special Master there was introduced in evidence by the Plaintiff one hundred seventy-seven (177) exhibits in connection with Plaintiff's testimony, and the Defendants introduced in evidence Kelsey Exhibits Nos. 1 and 2 and Lyndon Exhibits Nos. 1 to 15, inclusive, in connection with their testimony.

That said exhibits are material to the issues raised in the appeals which have been granted herein, and vary in length from one to several hundred pages each;

That it is not practicable to have the same copied into the transcripts or bound therein owing to the length of a number of the exhibits and the mass of detailed figures contained therein.

1566 Your Petitioners would, therefore, respectfully suggest to this Honorable Court that it is necessary and proper to transmit the said exhibits with the transcript of the proceedings herein to the Clerk of the United States Supreme Court at Washington, D. C., for consideration in connection with the transcript of the proceedings herein.

Wherefore, premises considered, your Petitioners respectfully pray that an order be entered herein, as provided by Sec. 4 of Rule 8 of the Supreme Court, instructing the Clerk of this Court to forward

with the transcript of the proceedings herein to the Clerk of the Supreme Court of the United States at Washington, D. C., for consideration by said Court in the review of the decree and judgment of this Court, Plaintiff's Exhibits Nos. 1 to 177, inclusive, and Defendants' Kelsey Exhibits Nos. 1 and 2 and Lyndon Exhibits Nos. 1 to 15, inclusive, with a request to the Clerk of the United States Supreme Court that said exhibits be carefully preserved and returned to the Clerk of this Court after the final determination of the respective appeals of the parties to this cause.

JOSEPH D. FRANK,
Solicitor for Plaintiff.
W. J. HOWARD,
Solicitor for Defendants.

1567 (Endorsed on Back:) No. 108—In Equity. Southwestern Bell Telephone Company vs. The City of Houston et al. In the District Court of the United States for the Southern District of Texas, Houston Division. Joint application of Plaintiff and Defendants for order authorizing original exhibits to be forwarded to the Clerk of the U. S. Supreme Court. Filed 17th day of January, 1921. L. C. Masterson, Clerk, by M. Anderson, Deputy.

1568 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

VS.

CITY OF HOUSTON et al., Defendants.

On this the 19th day of January, A. D., 1921, came on to be heard the joint application of the Plaintiff and Defendants herein for the issuance of an order authorizing and instructing the Clerk of this Court to transmit to the Clerk of the Supreme Court of the United States, at Washington, D. C., the original exhibits introduced in evidence before the Special Master in the trial of this cause, and said joint application having been duly considered, and it appearing to the Court that it is necessary and proper that said original exhibits should be transmitted to the Clerk of the Supreme Court of the United States, as prayed by the Petitioners, it is considered by the Court that said application should be, and the same is hereby granted, and the Clerk of this Court is hereby authorized and instructed to forward to the Clerk of the Supreme Court of the United States, at Washington, D. C., Plaintiff's Exhibits Nos. 1 to 177, inclusive, and Defendants' Kelsey Exhibits Nos. 1 and 2 and Lyndon Exhibits Nos. 1 to 15, inclusive.

1569 It is further ordered, adjudged and decreed that the Clerk of this Court write and send a letter of transmittal to the Clerk

of the Supreme Court of the United States, at Washington, D. C., requesting said Clerk to carefully preserve said exhibits and return the same to the Clerk of this Court upon the final determination of the respective appeals of the parties to this cause.

GEO. WHITFIELD JACK,
United States District Judge.

Dated January 19th, 1921.

(Endorsed on Back:) No. 108—In Equity. Southwestern Bell Telephone Company vs. The City of Houston et al. In the District Court of the United States for the Southern District of Texas, Houston Division. Order of Court granting joint application of Plaintiff and Defendants for order authorizing original exhibits to be forwarded to the Clerk of the U. S. Supreme Court. Filed 20th day of January, 1921. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

1570 In the District Court of the United States for the Southern District of Texas, Houston Division.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

CITY OF HOUSTON et al., Defendants.

Whereas, On the 20th day of July, 1920, after this cause had been finally determined by the Master, with the consent of the parties, and an order of the Court, Southwestern Bell Telephone Company was substituted in the place of The Southwestern Telegraph and Telephone Company as the Plaintiff, with the understanding and agreement that such substitution should in no way affect the litigation or prejudice either party on any question raised:

Therefore, it is agreed by and between the parties hereto that wherever the name The Southwestern Telegraph and Telephone Company appears in any of the papers constituting the record in this case which have been filed since July 20th, 1920, that the same shall be as legal and valid and have the same effect as if the name Southwestern Bell Telephone Company had been used, and it is further agreed and understood that the substitution of Southwestern Bell Telephone Company as party Plaintiff for The Southwestern Telegraph and Telephone Company shall not in any

1571 manner or respect affect or prejudice the rights of either parties hereto on any issues arising in this cause.

JOSEPH D. FRANK,
Solicitor for Plaintiff.
W. J. HOWARD,
Solicitor for Defendants.

(Endorsed on back:) In the District Court of the United States for the Southern District of Texas, at Houston. Southwestern Bell Telephone Company vs. City of Houston et al. No. 108. In Equity. Agreement of Counsel. Filed January 20th, 1921. L. C. Masterson, Clerk, by M. Anderson, Deputy.

1572 In the District Court of the United States for the Southern District of Texas, at Houston.

Equity. No. 108.

SOUTHWESTERN BELL TELEPHONE COMPANY, Complainant,

vs.

CITY OF HOUSTON et al., Defendants.

On this the — day of January, A. D., 1921, came on to be heard the joint application of the Plaintiff and Defendants herein for the issuance of an order authorizing and permitting the parties to have a portion of the testimony taken before Special Master incorporated in the record on appeal to the Supreme Court of the United States in question and answer form, and it appearing to the Court that a part of the testimony so introduced before the Special Master was of a technical nature, involving many computations and a mass of figures that it is impracticable to have such portions of the testimony incorporated in the record in narrative form, and that the parties, both Plaintiff and Defendants, desire to have such portions set forth in question and answer form, and it further appearing that the said record can be more properly made up by permitting portions of the said testimony to be set forth in question and answer form; it is considered by the Court that the said appli-

1573 cation should be and the same is hereby granted, to the extent that the parties Plaintiff and Defendants are hereby authorized and permitted to incorporate in the said record in question and answer form such parts of the evidence as may be of such technical character as to render it difficult to put in narrative form.

GEO. WHITFIELD JACK,

Judge of the District Court.

Endorsed on back:) In the District Court of the United States for the Southern District of Texas, at Houston. Southwestern Bell Telephone Co. vs. City of Houston, et al. Equity No. 108. Order granting leave to incorporate portions of the testimony in the record in question and answer form. Filed 22 day of Jan., 1921. L. C. Masterson, Clerk, by M. Anderson, Deputy.

1574 In the District Court of the United States for the Southern District of Texas, Houston Division.

No. 108. In Equity.

SOUTHWESTERN BELL TELEPHONE COMPANY, Plaintiff,

vs.

CITY OF HOUSTON et al., Defendants.

Plaintiff, Southwestern Bell Telephone Company's Statement of Evidence in Connection with the Appeal of the Defendants, the City of Houston et al.

1575 *Abstract and Copies of the Principal Exhibits Introduced in Evidence by Plaintiff and Which Are Not Copied Into the Statement of Evidence.*

Plaintiff's Exhibit No. 9 is as follows:

The Southwestern Telegraph and Telephone Company Statement of Dividends Paid, Years 1883 to 1919, Inclusive.

Year.	Annual rate.
1883 to 1889	None
1890	4.50%
1891	3.66%
1892 to 1896	4.00%
1897	4.75%
1898	5.00%
1899	3.50%
1900	4.00%
1901	8.00%
1902	2.20%
1903	6.30%
1904	5.50%
1905	5.60%
1576	
1906	6.90%
1907	6.25%
1908	10.50%
1909	7.50%
1910	6.50%
1911	6.00%
1912	7.00%
1913	6.00%
1914 to 1919	5.00%
Average	5.36%

Dividend rate.	Amount.	Per cent of total dividends paid.
Less than 4%	\$224,080	.98%
4% and less than 5%.....	679,063	2.98%
5% and less than 6%.....	11,581,860	50.85%
6% and less than 7%.....	5,779,658	25.38%
7% and less than 8%.....	2,455,500	10.78%
8%	585,280	2.57%
10½%	1,470,000	6.46%
Total Dividends Paid	\$22,775,441	100.00%

Plaintiff's Exhibit No. 11. "Uniform System of Accounts for Telephone Companies as prescribed by The Interstate Commerce Commission in accordance with Section 20 of the Act to 1577 Regulate Commerce. First Issue effective on January 1, 1913."

This is a printed pamphlet containing 79 pages in which is set out in detail the system of accounting to be followed by "Class A" telephone companies which are defined as "companies having average annual operating revenues exceeding \$250,000.00" and "Class B" telephone companies which are defined as, "companies having average annual operating revenues exceeding \$50,000.00 but not more than \$250,000.00."

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PLAINTIFF'S EXHIBIT NO. 24.

F. M. Hoag, Witness.

The Southwestern Telegraph and Telephone Company.

Houston Exchange.

Annual Rate of Reserve for Replacements.

Property account.	Per cent.
Land	0
Buildings	3.
Pole Plant	10.
Aerial Cable	5.4
Aerial Terminals and Miscellaneous.....	10.
Bare Iron Wire	16.5
Insulated Wire	15.
Drop Wire 20% of (15%).....	3.
Underground Conduit, Main	2.
Underground Conduit, Subsidiary.....	4.
Underground Cable, Main.....	3.
Underground Cable, Subsidiary & Block.....	7.
Underground Cable, House.....	6.
Underground Terminals, and Miscellaneous.....	10.
Right of Way	4.
Central Office Equipment	10.5
Station Apparatus	11.
Station Installations 20% of (15%).....	3.
Interior Block Wire 20% of (15%).....	3.
Private Branch Exchange	11.
Booths and Special Fittings.....	11.
Furniture and Fixtures	10.
Tools and Store Equipment.....	0
Stable and Garage Equipment.....	20.

Houston Exchange.

Weighted Annual Rate of Reserve for Replacements.

	Annual rate of reserve.	Per cent of total reproduction cost in each class of plant.	Weighted annual rate of reserve.
Land	% 0.	% 4.58	% .000
Buildings	3.	10.15	.000
Pole Plant.....	10.	7.86	.786
Aerial Cable.....	5.4	11.30	.610
Aerial Terminals & Miscellaneous.....	10.	1.88	.188
Bare Iron Wire.....	16.5	.49	.081
Insulated Wire.....	15.	1.12	.168
Drop Wire 20% of (15%).....	3.	1.01	.030
Underground Conduit, Main.....	2.	12.76	.255
Underground Conduit, Subsidiary.....	4.	1.66	.066
Underground Cable, Main.....	3.	11.92	.358
Underground Cable, Subsidiary & Block.....	7.	1.04	.073
Underground Cable, House.....	6.	.27	.016
Underground Terminals, Miscellaneous.....	10.	1.22	.122
Right of Way.....	4.	.49	.020
Central Office Equipment.....	10.5	24.64	2.587

Weighted Annual Rate of Reserve for Replacements—Continued.

	Annual rate of reserve.	Per cent of total reproduction cost in each class of plant.	Weighted annual rate of reserve.
Station Apparatus, P. B. X & Booths.....	11.	4.83	.531
Station Installations 20% of (15%).....	3.	1.81	.054
Interior Block Wire 20% of (15%).....	3.	.15	.005
Furniture & Fixtures.....	10.	.39	.039
Tools & Store Equipment.....	0.	.23	.000
Stable & Garage Equipment.....	20.	.20	.040
Total Physical Property.....		100.00	6.334

NOTE.—The Average annual depreciation rate for installations drops and block wires is determined as follows: The rate given in parenthesis is the proper rate, assuming that the installations, drops and block wires remain in service for their entire life. Owing to disconnection of service by subscribers, many installations, drops and block wires are removed or abandoned and charged to expense account at the time service is discontinued. It is estimated that about 80% of the installations, drops and block wires are treated in this manner. The depreciation rate is applicable only to the balance and therefore figured at 20% of the rate shown in parenthesis.

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PLAINTIFF'S EXHIBIT No. —.

The Southwestern Telegraph and Telephone Company.

Houston Exchange.

Amount of Annual Reserve for Replacements.

Total Physical Property October 1, 1919.....	5,683,610
Annual Rate of Reserve.....	6.334%
Amount of Annual Reserve 5,683,610 x 6.334%.....	359,999.86

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PLAINTIFF'S EXHIBIT No. 25.

F. M. Hoag, Witness,

The Southwestern Telegraph and Telephone Company.
Houston Exchange.

Life of Telephone Central Office Buildings in Texas.

Type of building.	Period of service.	Years in service.	Cause of removal.
Dallas-Cliff	1905-1915	10	Inadequacy
Ft. Worth .....	.....	..	..
.....Brick .....	.....	7	"
.....Brick	1899-1906	..	..
Concrete .....	.....	15	"
Brick .....	.....	14	"
.....Concrete	1891-1916	5	"
Waco .....	.....	16	"
.....Concrete	1895-1911	12	Destroyed by fire.
Houston-Preston	1904-1916		
Houston-Taylor .....	.....	
.....Wooden, Frame .....	.....	
San Antonio .....	.....	
.....Brick .....	.....	
Paris .....	.....	
.....Brick .....	.....	
Number of Buildings.....		7	
Total years of service.....		79	
Average life.....		11 2/7	

PLAINTIFF'S EXHIBIT No. 26.

Life of Central Office Switch-boards in Texas.

F. M. Hoag, Witness.

This Exhibit consists of 13 mimeographed pages. It deals with the life of switch-boards that have been installed in various towns and cities in Texas and later removed. The first column shows the town or city in which the board was installed; the second gives the type of switchboard, (magneto, common battery, etc.); the third gives the dates when the particular board was in service (e. g. 1903-1907); the fourth, the number of years the board was in service and the fifth, the cause of the removal of the board. On the thirteenth page the following summary appears:

Total common battery boards.....	18
Total years in service.....	123
Average years in service.....	6.83
Total magneto boards.....	270
Total years in service.....	2034
Average years in service.....	7.53

PLAINTIFF'S EXHIBIT No. 176.

F. M. Hoag, Witness,
S. W. T. & T. Co., Houston Plant.

Year.	Average book cost.	Realized depreciation.									
		Percentage of book cost for prior years.									
		Amount.	12th yr.	10th yr.	8th yr.	6th yr.	4th yr.				
1901.	289,000	.....	...	...	...	...	...	...	...	...	...
1902.	353,302	.....	...	...	...	...	...	...	...	...	...
1903.	437,928	.....	...	...	...	...	...	...	...	...	...
1904.	521,504	.....	...	...	...	...	...	...	...	...	...
1905.	584,705	.....	...	...	...	...	...	...	...	...	...
1906.	733,777	.....	...	...	...	...	...	...	...	...	...
1907.	881,135	.....	...	...	...	...	...	...	...	...	...
1908.	931,801	.....	...	...	...	...	...	...	...	...	...
1909.	1,031,892	28,027	...	...	9.7	6.4	4.9	...	...	...	...
1910.	1,245,322	18,554	...	...	5.3	3.6	2.5	...	...	...	...
1911.	1,601,295	52,568	...	18.2	12.0	9.0	5.9	...	...	...	...
1912.	2,072,131	183,903	...	52.6	35.2	25.1	19.8	...	...	...	...
1913.	2,351,352	121,397	42.2	27.8	20.8	13.8	11.7	...	...	...	...
1914.	2,501,269	57,748	16.3	11.0	7.9	6.2	4.6	...	...	...	...
1915.	3,088,836	115,171	26.4	19.1	13.1	11.2	7.2	...	...	...	...
1916.	3,571,752	157,372	30.2	21.5	16.9	12.7	7.6	...	...	...	...
1917.	3,591,114	152,600	26.1	17.3	14.8	9.5	6.5	...	...	...	...
1918.	3,591,151	74,662	10.2	8.0	6.0	3.6	3.0	...	...	...	...
1919.	3,705,738	32,178	3.7	3.1	2.0	1.4	1.3	...	...	...	...
Average 11 years 1909-1919.	.....	90,380	22.1	19.8	13.1	9.1	6.8	...	...	...	...

1583

Depreciation Reserve.

The percentage of realized depreciation from 1909 to 1917 inclusive, as shown by Plaintiff Exhibit No. 176, averages four per cent of the average book cost of the plant for these years. This per cent covers actual realized depreciation and provides nothing whatever as a reserve for replacements of any kind which must necessarily be realized in the future. The major items of plant such as central office equipment, buildings, underground cable, none of which are included in this four per cent average, must in time be replaced and the amount of these replacements when realized is so great that if not provided for by building up a reserve, the company would have no funds with which to make them.

During the years 1918 and 1919, replacements were restricted because of Government orders giving priority in men, material, and money to industries essential to winning the war, and the effect of these orders was also to delay replacements for some time after they became ineffective.

Amount for reserve for replacements allowed to be set aside under Government control 5.72% based on prior three years.

(Signed)

E. F. CARTER.

August 17, 1920.

H. B. Topping, Witness.

The Southwestern Telegraph & Telephone Co.

Houston, Texas.

Topping Valuation Co.

Annual Depreciation Reserve.

	Reproduction cost new.	Per cent rate of reserve.	Annual amt. of depreciation reserve.
Real Estate:			
Land.....	249,056	....	.....
Buildings:			
Preston.....	405,700	....	.....
Hadley.....	78,224	....	.....
Taylor.....	41,084	....	.....
Warehouse.....	366	....	.....
Total Buildings.....	525,374	2.5	13,134
Equipment:			
Central Office.....	1,894,837	....	.....
Other Equip. of Central Office.....	17,167	....	.....
Total Equipment.....	1,912,004	10	191,200
Subscribers' Station Equipment:			
Apparatus.....	362,295	....	.....
Installations.....	92,358	....	.....
P. B. X.....	67,184	....	.....

Block Wires.....	7,649	....	....
Booths & Special Fittings.....	9,754	....	....
Total Sub. Sta. Equip.....	539,240	10	53,924
Distributing System:			
Poles.....	555,641	10	55,564
Aerial Cable.....	861,822	8	68,946
Wire.....	168,461	15	25,269
U. G. Conduit Main.....	805,670	2	16,113
" Subsidiary.....	113,594	7	7,952
" Cable Main.....	827,029	3	24,811
" " Subsidiary.....	162,558	7	11,379
Right of Way.....	32,565	4	1,303
Total Dis. System.....	3,527,340	....	211,337
Sub Total (A).....	6,753,014	....	469,595
1585 Forward Sub Total (A).....	\$6,753,014	....	469,595
General Equipment:			
Furniture & Fixtures Local.....	27,788	10	2,779
" General Prorate 50%.....	13,893	10	1,389
Tools.....	10,591	20	2,118
Motor Vehicles.....	12,467	20	2,493
Total General Equipment.....	64,739	....	8,779
Total Physical Property.....	6,817,753	7.01	478,374
Total Annual Rate of Reserve for Depreciation in Per cent.....			7.01
Total Amount of Reserve for Depreciation.....			\$478,374

1586

PLAINTIFF'S EXHIBIT No. 47.

H. B. Copes, Witness.

Houston Exchange.

*Statement of Revenue to Exchange per Long Distance Call Handled
from Allowance to Exchange of 25% of the Outward Toll Revenue.*

September, 1919.

Outward Toll Revenue.....	\$36,281.00
Twenty-five Per Cent Outward Toll Revenue allowed Local Exchange.....	9,070.25
Number Outward Toll Calls.....	33,846
Number Inward Toll Calls... ..	26,917
<hr/>	
Total Number Outward and Inward Toll Calls	60,761

The Allowance to the Local Exchange per call handled amounts to
14.9 Cents.

1587

PLAINTIFF'S EXHIBIT No. 48.

H. B. Copes, Witness.

Statement, September, 1919, Showing the Average Amount per Call Paid 362 Independent Exchanges in Texas Connected Directly with the Toll Lines of the Southwestern Telegraph and Telephone Company for the Handling of Long Distance Calls.

Number of exchanges.	Total outward business.		Total inward business.		Total commissions.	Rate %.	Per call.
	Total calls.	Total revenue.	Total calls.	Total revenue.			
362	286,219	\$132,248.37	303,392	.....	\$24,374.33	12½ & 12½	4.13

Inward business not checked. Number of calls inward estimated on basis of study of January 1918 when this business was checked.

1588

PLAINTIFF'S EXHIBIT No. 49.

H. B. Copes, Witness.

Statement, September, 1919, Showing the Average Amount per Call Paid Local Exchanges for Handling Long Distance Calls by the Four Largest Independent Toll Line Companies in Texas.

Name of toll line company.	Number of exchanges connected.	Total local stations.	Total business.				Paid per call.
			Outward.		Inward.		
			Calls.	Revenue.	Calls.	Revenue.	
West Texas Tel. Co., Brownwood.....	36	2,920	3,763	\$1,064.06	3,414	\$1,020.00	3.7¢
Gulf States Tel. Co., Tyler.....	20	3,255	3,172	687.40	3,165	722.35	2.8¢
San Angelo Tel. Co., San Angelo.....	7	1,661	1,751	737.45	1,553	606.60	5.6¢
Texas L. Distance Tel. Co., Waco.....	20	6,455	5,589	1,682.00	4,418	1,452.55	5.1¢
Totals.....	83	14,241	14,275	4,201.50	12,530	3,802.10	4.2

1589

PLAINTIFF'S EXHIBIT No. 50.

H. B. Copes, Witness.

Statement, September, 1919, Showing Average Amount per Call Received by the Eight Largest Independent Exchanges in Texas for the Handling of Long Distance Messages Other Than the Long Distance Business of the Southeastern Telegraph and Telephone Company.

Company.	Exchanges.	Population.	Local stations.	No. of ind. toll lines.	Outward business.		Inward business.		Total coms. recd.	Received per call handled
					Total calls.	Total revenue.	Total calls.	Total revenue.		
	Dallas	140,000	37,264	4	3,829	2,002.25	6,306	3,831.75	1,037.85	10.1¢
	Waco	37,500	7,440	2	9,962	5,308.95	6,732	3,830.39	1,337.93	8.¢
	Port Arthur.....	22,000	1,877	1	49	10.10	49	10.10	2.52	2.5¢
	Temple	18,000	1,806	3	3,907	1,471.00	2,943	1,193.53	367.75	5.3¢
	Sherman	17,500	2,920	3	2,029	581.85	1,826	728.80	150.62	3.9¢
	Greenville	17,500	2,712	9	1,019	194.35	1,485	310.80	41.44	1.6¢
	Denton	7,500	1,313	4	889	152.40	1,083	253.95	61.70	3.1¢
	Gonzales	4,000	1,164	1	17	4.10	25	6.50	2.12	5.¢
		264,000	56,496	27	21,641	9,815.00	20,580	10,106.82	3,001.97	7.1¢

H. B. Coates, Witness.

Statement, September, 1919, Showing Average Amount per Call Received by the Eight Largest Independent Exchanges in Texas for the Handling of Long Distance Messages, Including the Long Distance Business of the Southwestern Telegraph and Telephone Company.

Exchanges.	Population.	Local stations.	Ind. toll lines.	Outward business.		Inward business.		Total coms. recd.	Received per call handled.
				Total calls.	Total revenue.	Total calls.	Total revenue.		
Dallas	140,000	37,264	5	81,268	49,834.96	67,472	41,548.59	5,812.12	3.2¢
Waco	37,500	7,440	3	16,996	11,380.60	13,826	9,902.04	2,552.30	8.2¢
Port Arthur	22,000	1,877	2	5,446	1,838.35	5,446	1,838.35	308.17	3.3¢
Temple	18,000	1,806	4	5,822	2,526.00	4,908	2,190.13	578.87	5.3¢
Sherman	17,500	2,920	4	8,402	3,976.05	8,199	4,123.00	490.04	2.9¢
Greenville	17,500	2,712	10	9,625	3,787.60	10,601	3,904.05	939.75	4.7¢
Denton	7,500	1,313	5	4,633	1,848.80	4,827	1,950.35	231.34	2.4¢
Gonzales	4,000	1,164	2	1,456	777.50	1,464	779.90	203.97	6.9¢
Totals	284,000	56,496	35	133,648	75,970.46	116,233	66,236.41	11,176.56	4.4¢

Statement, September, 1919, Showing Average Amount per Call Received by the Five Largest Independent Exchanges Connected Directly with the Toll Lines of the Southwestern Telegraph and Telephone Co. for the Handling of Long Distance Calls.

Exchanges.	Population.	Local stations.	Toll lines.	Outward business.		Inward business.		Coms. recd.	Recd. per call.
				Total calls.	Total revenue.	Total calls.	Total revenue.		
Texasiana	22,000	3,284	S. W. Only	46,690	4,315.55	6,690	4,315.55	1,078.89	8. ¢
Greenville	17,500	2,712	" "	48,046	3,593.25	8,006	3,593.25	898.31	5.2¢
Brownwood	12,000	1,822	" "	1,774	1,746.45	1,873	1,724.05	433.80	11.9¢
Bryan	6,000	1,441	" "	1,806	1,319.80	1,308	923.50	244.46	10.8¢
Gonzales	4,000	1,164	" "	41,439	773.40	1,439	773.40	201.85	7. ¢
Totals	61,500	10,423		20,375	11,748.45	19,916	11,329.75	2,957.31	7.3

Alward was not checked and Commissions paid on Outward business only.

H. B. Copes, Witness.

Statement Showing the Highest Amounts per Call Paid Independent Exchanges in Texas by Five Largest Toll Line Companies for Handling Long Distance Calls, the Highest Average Amount per Call Received by Any Large Independent Exchange, the Highest Average Amount Paid per Call by Any of the Five Largest Toll Line Companies in Texas, and the Amount Allowed the Local Exchange at Houston per Call.

Highest per call payment by The Southwestern Tel. & Tel. Co., Brownwood, Texas.....	11.9 Cents
" " " " The Texas Long Distance Telephone Co., Giddings, Texas.....	9.5 Cents
" " " " The West Texas Telephone Co., Mercury, Texas.....	9.7 Cents
" " " " The Gulf States Telephone Co., Henderson, Texas.....	4.1 Cents
" " " " The San Angelo Telephone Co., Ozona, Texas.....	8.0 Cents
Highest average per call received by any large Independent Exchange, Dallas, Texas.....	10.1 Cents
Average per call payment by the Four Largest Independent Toll Line Companies to Exchanges not owned by them.....	4.2 Cents
Average per call paid by The Southwestern Tel. & Tel. Co. at 362 Exchanges connected with but not owned by it.....	4.13 Cents
Highest average per call received by any of Eight Largest Independent Exchanges including Southwestern business, Waco, Texas.....	8.2 Cents
Average per call received by Eight Largest Independent Exchanges exclusive of Southwestern business.....	7.1 Cents
Average per call paid by The Southwestern Tel. & Tel. Co. at Five Largest Exchanges.....	7.3 Cents
Amount allowed local exchange at Houston per call.....	14.9 Cents

1563 *Abstract of Plaintiff's Exhibits Numbered 61 to 121, Inclusive, Introduced in Connection with the Testimony of Frederick L. Rhoda, a Witness for Plaintiff.*

61. Tabular View of License Contract Services.

A chart showing in tabular form the services furnished to the Associated Companies by the General Staff of the American Telephone and Telegraph Company. These services are divided into two broad classes: (1) Advisory, Consulting, Financial and General Services, and (2) Instrument Services. The Advisory, Consulting, Financial and General Services are rendered by the following departments of the General Staff: Department of Development and Research, Engineering Department, Legal Department, Executive Department and Treasurer's Department, Accounting Department and Insurance Department. The services rendered by each of these departments are described in considerable detail. They consist of such items as the following:

- (a) Development in advance of apparatus and methods needed by the Associated Companies for improvements in their service.
- (b) Large amount of work done by the General Engineering Staff in an advisory capacity on specific engineering questions. The engineers of the Associated Companies call upon the General Engineering Staff for specific advice and assistance whenever in their opinion they require it.

- (c) Expert advice as to all legal questions arising in connection with the telephone business, based on comprehensive knowledge and experience.
- (d) Use of all patents owned or controlled by the American Telephone and Telegraph Company. The Associated Companies are relieved of all responsibility for claims for infringement and all concern with patent matters of any kind.
- (e) Loaning money at ordinary rates of interest, taking stock without discount, and assisting in the sale of securities.
- (f) Developing and maintaining a uniform accounting system.

The above are but a few of the many services described on the chart. The Instrument Services consist of furnishing to the Associated Companies all of the transmitters, receivers and induction coils required by the Associated Companies for giving telephone service, and also repairing and maintaining these instruments.

62. Letter of Theodore N. Vail to H. W. Pope, which is as follows:

"Subject, Central Office System.

W. H. Forbes, President. Theodore N. Vail, General Manager.

George L. Bradley, President and Treasurer.

The National Bell Telephone Company,

No. 95 Milk Street,

P. O. Box 3466.

Boston, June 26, 1879.

DEAR SIR:

Before putting in any exchange or starting in or even planning for a Central Office System, I think it would be well for you to consult thoroughly with Mr. Watson, and examine minutely into our standard system for Central Office Connections. What we want to do in every case is to adopt the best system, and that we think we have. Then if there is anything better we should of course want to adopt that.

Please let me hear from you in regard to this.

Yours truly,

THEO. N. VAIL,
G. M."

H. W. Pope, 639 Bway.

63. Organization Chart, A. T. & T. Co., Dept. of Development and Research, Jan. 1, 1920.

A chart showing the members of this department and their duties. The chart shows that on January 1, 1920, there were 226 employees, of whom about 130 were engineers. The engineers are listed under the broad subjects upon which they are working.

Abstract of Plaintiff's Exhibits Numbered 61 to 121—Continued.

64. Organization Chart, A. T. & T. Co., Engineering Dept., Jan. 1, 1920.

A chart showing the members of this department and their duties. The chart shows that on Jan. 1, 1920 there were 324 employees of whom about 150 were engineers. The engineers are listed under the broad subjects upon which they are working.

65. Bulletin on Transmission Equivalents.

A bulletin prepared in 1912 by the General Engineering Staff of the American Telephone and Telegraph Company, with a Supplement and Illustrative Examples prepared in 1914. It gives the transmission equivalents of the types of circuits and of the apparatus most generally used, with an explanation of how they were determined. The complete bulletin consists of 66 pages, of which 43 are illustrative charts and diagrams.

66. Titles of Some of the Circular Letters and Specifications That Have Been Prepared for the Associated Companies.

A list showing the titles of some of the circular letters and specifications that have been prepared by the General Engineering Staff for the use of the Associated Companies. This list consists of 31 pages and contains the titles of nearly 500 circular letters and about 300 specifications.

67. Rubber Cable.

Half-tone print of one of the early types of cables used in the Bell System. This cable was rubber insulated and contained 1585 10 pairs of wires.

68. 1,200 Pairs Cable, Fanned Out.

Half-tone print showing a length of the 1,200 pair, No. 24 Gauge Cable developed by the General Engineering Staff. A portion of the lead sheath has been removed so as to show at one end the manner in which the cable is built up by layers, and at the other end the wires fanned out.

69. 1,200 Pair, Cable Section.

Half-tone print showing three sections of 1,200 pair cable, from one of which the wires have been pushed out.

70. Principal Stages in the Development of Paper-Insulated Cable used in the Bell System.

Half-tone print showing sections of 10 full-size paper-insulated cables with the years in which they were developed. During the period 1888 to 1914 the number of wires which could be placed in a full-size cable (about 2½ inches in diameter) was increased from 100 No. 18 Gauge wires to 2,424 No. 24 Gauge wires.

71. A. T. & T. Co. Specifications No. 3012: "General Cable Splicing."

72. A. T. & T. Co. Specifications No. 3013: "Underground Cable Splicing."

73. A. T. & T. Co. Specifications No. 3014: "Aerial Cable Splicing."

74. A. T. & T. Co. Specifications No. 3015: "Block Cable Splicing."

75. A. T. & T. Co. Specifications No. 3016: "House Cable Splicing."

Exhibits 71 to 75 inclusive are a series of handbooks prepared by the General Engineering Staff and sent to the Associated Companies in the years 1917 and 1918. They cover in great detail the methods and materials to be used in splicing the different types of cables. They consist of more than 200 pages and contain a great number of drawings illustrating the various methods described.

76. Boston-Washington Type Duplex Cable.

Half-tone print showing a section of the Duplex Cable developed by the General Engineering Staff for use in the toll and long distance lines of the Bell System.

1506

77. Cable Loading Coil and Section, Wire Core Type.

Half-tone print showing a cable loading coil and a section of the same. This loading coil is of the wire core type.

78. Wire Core for Cable Loading Coil and Sample of No. 38 B. & S. Gauge Core Wire Before Insulation Has Been Put On.

Half-tone print showing the wire core for the cable loading coil in Exhibit No. 77, and a spool of the bare No. 38 B. & S. gauge core wire. The wire core contains approximately 69,000 turns of wire and weighs 2.6 pounds. The insulation consists of an enamel film with which the wires are coated.

79. Iron Dust Core for Cable Loading Coil and One of the Core Rings.

Photograph of a new type of cable loading coil core developed recently by the General Engineering Staff. It consists of a number of rings bound together with cloth tape. These rings are not of solid iron but are composed of a very great number of small insulated particles of iron, pressed together by hydraulic pressure.

80. Oscillograph Records Showing Changes in Telephone Currents. Photo Follows Exhibit #121.

Half-tone print showing changes in the electrical current when different words are spoken into the telephone

Abstract of Plaintiff's Exhibits Numbered 61 to 121—Continued.

81. Repeater Bulb and Socket.

Half-tone print showing a repeater bulb and socket complete, and the bulb and socket separately.

82. Line and Cut-off Relay, Old Type.

Half-tone print showing two views of a combined line and cut-off relay of the old type.

83. Line Relay and Cut-off Relay, New Type.

Half-tone print showing two views of new types of line relays and cut-off relays developed by the General Engineering Staff.

1597

84. A. T. & T. Co. Specifications No. 3851: "Substation Apparatus."

85. A. T. & T. Co. Specifications No. 3852: "Substation Apparatus Installations."

86. A. T. & T. Co. Specifications No. 3853: "Substation Wiring."

87. A. T. & T. Co. Specifications No. 3854: "Substation Connections."

88. A. T. & T. Co. Specifications No. 3855: "Adjustment of Substation Apparatus."

89. A. T. & T. Co. Specifications No. 3856: "Substation Sign Installation."

90. A. T. & T. Co. Specifications No. 3857: "No. 50 Coin Collector Installation."

Exhibits numbered 84 to 90 inclusive are a series of handbooks prepared by the General Engineering Staff and sent to the Associated Companies in the year 1917. They cover in great detail the equipment and methods to be used in installing the various types of substation apparatus. There are nearly 200 pages, with a large number of illustrative drawings.

91. A. T. & T. Co. Specifications No. 3613: "Underground Conduit Construction."

A handbook prepared by the General Engineering Staff and sent to the Associated Companies in the year 1913. It covers in great detail, with numerous drawings, the materials and methods to be used in installing underground conduits. There are 72 pages.

92. A. T. & T. Co. Specifications No. 3890: "Drop Wiring."

A handbook prepared by the General Engineering Staff and sent to the Associated Companies in the year 1918. It covers the materials and methods to be used in drop wiring. There are 82 pages, with a large number of drawings.

93. A. T. & T. Co. Specifications No. 4032: "Underground Cable Placing."

94. A. T. & T. Co. Specifications No. 3929: "Aerial Cable Construction."

95. A. T. & T. Co. Specifications No. 3933: "House Cable Placing."

96. A. T. & T. Co. Specifications No. 3931: "Block Cable Construction."

1598 Exhibits 93 to 96 inclusive are copies of handbooks prepared by the General Engineering Staff and sent to the Associated Companies in the year-1918 and 1919. They cover in great detail, with numerous drawings, the materials and methods to be used in placing underground, aerial, house and block cables. There are 300 pages.

97. A. T. & T. Co. Specifications No. 4918: "First Aid."

This is a 16 page handbook prepared by the General Engineering Staff and sent to the Associated Companies in 1919. It describes the proper kind of treatment to be administered for various kinds of accidents.

98. A. T. & T. Co. Specifications No. 3921: "Construction of Feed Pole Lines used Jointly for Supply Circuits and Signal Circuits."

This is a large specification prepared by the General Engineering Staff and sent to the Associated Companies in 1917. It describes in great detail, with several full page illustrative drawings, what are considered the proper methods to be used in constructing pole lines for joint use with supply circuits and signal circuits. There are 25 pages.

99. A. T. & T. Co. Specifications No. 3882: "Main Frame Protection, 'A' Type Frames."

100. A. T. & T. Co. Specifications No. 3881: "Main Frame Protection, 'B' Type Frames."

101. A. T. & T. Co. Specifications No. 3850: "Substation Protector Installation."

102. A. T. & T. Co. Specifications No. 3918: "Substation Protection, Including Private Branch Exchanges."

Exhibits 99 to 102 inclusive are copies of handbooks on the subject of protection which were prepared by the General Engineering Staff and sent to the Associated Companies in the year 1917. There are 70 pages covering the proper type, location and method of installing protectors at central offices and substations. There are numerous illustrations.

103. Some Cases of Work on Hand.

A list showing, by title only, some of the cases of work which the General Engineering Staff has on hand. About 150 subjects are listed, covering plant matters only.

Abstract of Plaintiff's Exhibits Numbered 61 to 121—Continued.

104. Some Cases of Work Completed.

A list showing, by title only, some of the cases of work which has been completed by the General Engineering Staff. About 300 subjects are listed, covering plant matters only.

1599 105. List of Unexpired Patents Owned or Controlled by the American Telephone and Telegraph Co., as of October 1, 1919.

A list showing for each of the patents owned or controlled by the American Telephone and Telegraph Company, or under which the American Telephone and Telegraph Co. holds a license, the number of the patent, date of issue, name of the inventor, and subject of the patent. On October 1, 1919, there were 3,486 such patents, covering the apparatus and methods now used by the Bell System, and also the apparatus and methods which the General Engineering Staff may need to use in future development.

106. Blake Transmitter.

Half-tone print showing two views, open and shut, of the Blake Transmitter.

107. Transmitter No. 239.

Half-tone print showing two views, one complete and one with the head removed, of the No. 239 solid back wall set.

108. Common Battery Bracket Transmitter No. 242.

Half-tone print showing two views, one complete and one with the head open, of the No. 242 common battery bracket transmitter.

109. Common Battery Bracket Transmitter No. 250.

Half-tone print showing two views, one complete and one with the head open, of the No. 250 common battery transmitter.

110. Transmitter No. 229.

Half-tone print showing three views of the No. 229 transmitter. One of the views shows the head open.

111. Transmitter No. 329.

Half-tone print showing three views of the No. 329 transmitter. One of the views shows the head open.

112. Transmitter No. 323.

Half-tone print showing three views of the No. 323 transmitter. One of the views shows the head open.

1000

113. No. 20, Induction Coil.

Half-tone print showing the No. 20 induction coil developed by the General Engineering Staff.

114. Cross Section, No. 229 Transmitter.

Half-tone print showing a cross section of the No. 229 transmitter.

115. Types of Transmitters That Have Been Standard in the Bell System, But Are Now Obsolete.

Large half-tone print showing 66 different transmitters that have been standard in the Bell System, but which are now obsolete.

116. Receiver No. 101.

Half-tone print showing the No. 101 receiver.

117. Receiver No. 122 (One-piece and Two-piece Case).

Half-tone print showing two models of the No. 122 receiver developed by the General Engineering Staff.

118. Cross Section, No. 122 Receiver.

Half-tone print showing a cross section of the No. 122 receiver.

119. Receiver No. 144.

Half-tone print showing the No. 144, unit type, receiver developed by the General Engineering Staff.

120. Types of Receivers That Have Been Standard in the Bell System, But Are Now Obsolete.

Large half-tone print showing 48 different receivers that have been standard in the Bell System, but are now obsolete.

121. What it Would Cost Southwestern Telegraph and Telephone Company in State of Texas to Provide Its Own Instruments.

1601 *What it Would Cost Southwestern Telegraph and Telephone Company in State of Texas to Provide Its Own Instruments.*

(1)	First Cost: Set of Instruments \$4.50.		
(2)	Annual cost per set of Instruments:		
(3)	8% Return on Investment.....	\$.360	
(4)	8% Reserve for Replacement.....	.300	
(5)	Repairs .....	.060	
(6)	1% Cost of Administration.....	.045	
(7)	2% Reserve for Contingencies.....	.090	
(8)	Sub-total	<u>\$.905</u>	
(9)	Average number of sets per station.....	1.05	
(10)	Annual cost per station (except Stock of Instruments to ensure continuity of Supply) \$.905 x 1.05.....	\$.950	
(11)	Stock of Instruments to ensure continuity of supply:		
(12)	Proportion of instruments in stock—6%.		
(13)	6% of \$4.50 = \$.27.		
(14)	Annual cost of carrying this stock:		
(15)	Return on Investment.....	8%	
(16)	Cost of Administration.....	1%	
(17)	Insurance and Contingencies.....	2%	
(18)		<u>11%</u>	
(19)	11% of \$.27.....	.030	
(20)	Total Annual Cost per Station.....	<u>\$.980</u>	

1602 *Abstract of Plaintiff's Exhibits Numbered 122 to 135. Inclusive, Filed in Connection With Testimony of R. F. Estabrook, a Witness for Plaintiff.*

EXHIBIT 122.

Photograph No. 1 Common Battery Relay Switchboard, "A" Board.

This exhibit is a photograph of one of the types of standard switchboard equipment employed in central offices throughout the Southwestern territory in the State of Texas and in the City of Houston. The photograph shows the face of such type of switchboard, the details of which include the subscribers' multiple of 8,000 lines, the outgoing trunk multiple, the answering jacks and lamps and the operators' position equipment, including cords, cord supervisory signals, cord keys, etc.

EXHIBIT 123.

Photograph Incoming Trunk Switchboard, "B" Board.

This exhibit shows the face of the kind of "B" board equipment installed in connection with the "A" switchboard equipment illustrated in Exhibit 122. The photograph shows the subscribers' multiple of 10,500 lines, the incoming trunk cords, trunk signals, trunk ringing keys, etc., which comprise each "B" operator's position equipment.

EXHIBIT 124.

Diagram of a Local Multiple Connection.

This diagram is an excerpt from the Standard Local Operating Text Book, Traffic Circular No. 113, provided by the American Company to the Associated Companies. It is a schematic drawing to illustrate a connection through the local subscribers' multiple between calling and called telephones both connected with the same "A" switchboard.

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EXHIBIT 125.

Diagram of Call Circuit Trunk Connection.

This diagram is an excerpt from the Standard Local Operating Text Book, Traffic Circular No. 113, provided by the American Company to the Associated Companies. It is a schematic drawing to illustrate a connection between calling and called telephones when they are subscribers to different central offices and the completion of the call involves connection at an "A" position between a calling telephone and a call circuit trunk and at a "B" position between the same call circuit trunk and the called telephone line in the "B" multiple.

EXHIBIT 126.

Photograph Back of an "A" Switchboard.

This exhibit shows the apparatus and wiring on an "A" board section viewed from the back of the switchboard. The principal features shown are the switchboard cabling containing the multiple of subscribers' lines, the switchboard cabling containing the multiple of the outgoing trunk circuits, the shelf on which the fixed ends of the flexible "A" cords are connected at terminals to the cord circuit cables, the blocks of supervisory relays and resistances controlling the cord circuits, and at the bottom, the cables extending the subscribers' lines from the intermediate distributing frame to the answering jacks and lamps.

EXHIBIT 127.

Drawing of an "A" Position.

This exhibit is a diagram showing in more detail the principal items of equipment provided on a typical "A" position, each portion of the equipment being marked with its proper name or description.

Exhibits 122 to 127 were used by the witness in explaining the technical aspects of the switchboard equipment which is designed by the General Engineering Staff for the use of the Associated Companies.

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EXHIBIT 128.

No. 1-D Switchboard Equipment.

This exhibit consists of a bound copy of General Engineering Circular No. 787, issued by the Engineering Department of the A. T. & T. Company and comprising a general description of this type of board, a detailed description of all the component circuits, apparatus, racks, frames and power equipment with the complete information required for engineering and planning an installation of this equipment. In Section 11, page 28, are given the numbers and titles of twelve other general engineering circulars, the information in which is also referred to in connection with the engineering of this type of equipment. The circular consists of about 57 pages of typewritten matter and 145 pages of drawings of circuits and equipment.

EXHIBIT 129.

Standard Traffic Engineering Practices.

This exhibit consists of a copy of General Engineering Circular No. 644, issued by the Engineering Department of the A. T. & T. Company. It comprises about 92 pages of printed matter, tables,

charts, diagrams, etc., and describes engineering practices recommended for use in engineering local and toll central office equipments. It furnishes information as to the engineering studies and estimates on which switchboard requirements are based, descriptions of the various types of switchboards and the conditions for which each type is adapted, tables and other information for determining the quantities and most economical arrangement of equipment, and recommends the traffic engineering records and form of traffic study that are needed for proper engineering of switchboard requirements by an Associated Company.

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EXHIBIT 130.**Local Operating Practice.**

This exhibit consists of copies of Traffic Circular No. 73 and supplements, which together constitute the standard local operating practices, prepared and issued to the Associated Companies by the Engineering Department of the American Company for the guidance of the central office operating forces. It consists of about 520 pages of printed matter issued in loose-leaf form at various dates and contains complete information for the guidance of "A" operators, "B" operators, toll switching operators, tandem operators, ringdown operators, multiple marking operators, trouble operators, information operators, rural operators and the supervisory forces who direct the work of these operating forces.

EXHIBIT 131.**Local Operating Text Book.**

This exhibit consists of 140 printed pages issued as Traffic Circular No. 113 by the Engineering Department of the A. T. & T. Company. It provides information designed for the instruction of new employees of the Associated Companies who are to be trained for the operating of the local switchboards. The information is set up in the form of a series of lessons illustrated by diagrams of the equipment and arrangements.

EXHIBIT 132.**Traffic Records.**

This exhibit consists of copies of Traffic Circulars No. 26, 22 pages, No. 27, 13 pages, No. 28, 12 pages, No. 29, 12 pages, and No. 77, 11 pages, issued by the Engineering Department of the American Company, all together comprising 72 pages of printed matter, which provides the Associated Companies with information as to the methods and forms to be employed in keeping records of the local and toll traffic which they handle and for equating the
1606 volumes of traffic of different classes to a common traffic unit and for working these traffic records up into the form most

significant and useful for purposes of engineering and efficient administration.

EXHIBIT 133.

Operating Labor Costs.

This exhibit consists of a copy of a circular letter from Hammond V. Hayes, Chief Engineer of the American Company, to the Chief Engineers or other officials of all of the Associated Companies, dated January 18, 1907, accompanied by 10 charts, all constituting recommendations and information as to improved methods to be used in determining the forces required to operate switchboards and stating that employment of these methods would result in saving to the Associated Companies which might equal nearly a million dollars a year in their operating costs.

EXHIBIT 134.

Adjustment of Force.

This exhibit consists of a copy of Traffic Circular No. 117, issued by the Engineering Department of the A. T. & T. Company and comprising 59 pages of printed matter, charts and tables describing methods that will result in the most satisfactory and economical determinations of the sizes of the forces required to operate local and toll switchboards and the arrangements of their hours of work which are most convenient to the employees and result in most satisfactory service and economical utilization of the employees' time.

EXHIBIT 135.

Standard Toll Operating Methods.

This exhibit consists of copies of Traffic Circular No. 57 and supplementary circulars, comprising 115 pages of printed matter, and which constitute a description of the most efficient and economical methods to be employed in handling the toll traffic of the Associated Companies and operating their switchboards.

1607 PLAINTIFF'S EXHIBITS NOS. 136-140, INCLUSIVE.

H. Blair-Smith, Witness.

No. 136. Organization Chart—American Telephone and Telegraph Company.

This exhibit shows, in graphic form, the organization of the American Telephone and Telegraph Company. It gives the names of the officers and shows the lines of responsibility.

No. 137. Accounting Circular No. 8, Standard Telephone Accounts—Bell Telephone System—Effective January 1, 1913.

This exhibit consists of the accounting rules and classifications prescribed for Telephone Companies by the Interstate Commerce Commission in the Uniform System of Accounts for Telephone Companies, First Issue, effective January 1, 1913, together with modifications and amplifications. The exhibit contains a classification of all accounts by number codes and a description of what is covered by each account prescribed.

No. 138. Accounting Circular No. 12, Questions and Answers—(Interpretation and Rulings Relating to Standard Telephone 1608 Accounts)—Bell Telephone System—Effective July 1, 1916.

This exhibit states, in question and answer form, the interpretations and rulings issued by The Interstate Commerce Commission in its "Accounting Bulletin No. 11: Interpretations of Accounting Classifications embodied in the Uniform System of Accounts for Telephone Companies" effective July 1, 1916. It contains an index arranged numerically by account numbers and an index arranged alphabetically by subject, or account names, both of which refer to the particularly numbered question and answer to be referred to for correct classification.

No. 139. Accounting Bulletin 108-A, Standard Occupational Classification of Telephone Employees—Bell Telephone System—September 1, 1917.

This exhibit gives in Section I, pages 2 and 5, the rules and main occupational classes prescribed by The Interstate Commerce Commission, effective July 1, 1917. It also includes in Section II, pages 6 and 38, sub-classes of the main classes which have been prescribed for use by the Bell System.

No. 140. Circular of Harris Forbes & Company, of New York, Giving Data as to 7% First Mortgage Gold Bonds to the Amount 1609 of \$900,000.00 Issued by The Houston Gas Company.

1610 PLAINTIFF'S EXHIBITS NOS. 141 TO 145, INCLUSIVE.

E. V. Cox, Witness.

No. 141.

This Exhibit is a blank form of standard contract between the Western Electric Company and the Associated Companies, stating the terms according to which the Western Electric Company acts as manufacturing and supply agent of the Associated Companies.

The Exhibit is as follows:

This agreement, made this — day of —, A. D., 19—, by and between Western Electric Company, a corporation organized and existing under the laws of the State of New York, party of the first part, hereinafter called the Electric Company, and —, a corporation organized and existing under the laws of the State of —, party of the second part, hereinafter called the Telephone Company.

Witnesseth, That the said parties, for value received and in consideration of the agreements herein contained, do hereby, for themselves, their successors and assigns, covenant and agree as follows:

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Scope.

1. The Telephone Company hereby employs the Electric Company as its agent to procure for it all the articles which it may require for its own use, except those which are named or described in Appendix "A" hereto (which may hereafter be altered from time to time by mutual consent), and hereby agrees to procure all such articles through the Electric Company; provided, however, that nothing herein contained shall be construed as requiring the Telephone Company to purchase, or use any article, or articles manufactured or sold by the Electric Company unless it shall desire to do so.

Services.

2. The Electric Company agrees to procure by manufacture, purchase or otherwise from such sources and to deliver at its store rooms to such persons, in such quantities, in such a manner and at such times, as the Telephone Company may reasonably designate, any apparatus, supplies or material which the Telephone Company may reasonably require, and agrees that the store rooms established at such places as may be mutually agreed upon shall not be discontinued or moved to another city except by the consent of the Telephone Company, or on one year's notice in writing by the Electric Company.

1612 The Electric Company shall not be required to deliver any apparatus, supplies, or material, or to buy any unusual large quantities of supplies or material, or to manufacture any special apparatus, except on the Telephone Company's written requisition, and the Telephone Company agrees to take within one year all the apparatus, supplies or material so bought or manufactured; or failing so to do, to thereupon reimburse the Electric Company for all actual loss sustained by it on account of such failure.

Remuneration.

3. The Telephone Company agrees to remunerate the Electric Company as follows:

(a) For furnishing telephonic appliances manufactured under exclusive license from The American Bell Telephone Company, and

delivered at its warerooms, standard prices, uniform to all licensees of The American Bell Telephone Company.

(b) For furnishing underground, aerial and submarine cable manufactured by the Electric Company:

If shipped direct from factory, factory cost of such cable, plus eight per centum (8%) at factory; or

If shipped from local storeroom, full reels, factory cost, plus ten per centum (10%), plus transportation charges to storerooms; less than full reels, factory cost, plus fifteen per centum (15%), plus transportation charges to store rooms. Actual loss on short lengths of cable, caused by the Telephone Company's orders for 1613 less than full reels, shall be borne by the Telephone Company.

Factory cost shall include only the cost of productive labor, the cost to Electric Company of materials on the date order is received by Electric Company, and the proper share of such expenses as are necessarily incurred for the purpose of manufacturing cable.

(c) For furnishing other manufacturers of the Electric Company: Prices as low as the Electric Company's prices to its most favored customers in the United States.

(d) For furnishing articles not made by the Electric Company, excluding hard-drawn copper wire:

If shipped from any storeroom of the Electric Company, cost to the Electric Company, plus six per centum (6%); or

If shipped from any other point direct to Telephone Company, cost to the Electric Company, plus four per centum (4%).

(e) For furnishing hard-drawn copper wire:

If shipped from any storeroom of the Electric Company, cost to the Electric Company, plus five per centum (5%); or

If shipped from any other point direct to the Telephone Company, cost to the Electric Company, plus one per centum (1%).

1614 The term "Cost" as used in paragraphs (d) and (e) of this section means the net price which the Electric Company is obligated to pay the supplier after all rebates, discounts and commissions have been deducted. When transportation charges, in whole or in part, are treated by the supplier as a part of his net price to the Electric Company, they shall be included in "cost" as herein defined. All other transportation charges, except cartage to the Electric Company's storerooms on articles not made by the Electric Company, shall be charged the Telephone Company, but without the addition of the aforesaid percentages. Cartage charges to the Electric Company's storerooms shall be borne by the Electric Company.

Special Services.

4. The Electric Company further agrees, at the option of the Telephone Company, to undertake and perform, with due care and diligence, any or all of the following described special services (none

of which is included in the undertakings of the Electric Company, as described in Section 2), for such remuneration as may be mutually agreed upon from time to time:

(a) Receiving, storing and reissuing or disposing of any used apparatus, supplies and material returned by the Telephone Company.

(b) Carrying any special stock of any articles which the Telephone Company may prescribe from time to time.

1615 (c) Receiving, storing and reissuing or disposing of furniture or fixtures, tools and construction outfits.

(d) Operating a local repair and emergency shop.

(e) Receiving, storing and delivering telephones and transmitters.

(f) Mounting telephones and transmitters.

(g) Inspection of articles not made by the Electric Company.

(h) Cartage, except to the Electric Company's storerooms.

(i) Prepayment of transportation charges on shipments to the Telephone Company, and taking up and adjusting claims with carriers.

(j) Any special accounting or clerical work not ordinarily required of a Purchasing Agent.

(k) Any other services not hereinbefore in this contract described.

Payment.

5. The Electric Company shall render a monthly statement of account, which shall be due and payable thirty (30) days after the date of its delivery to the Telephone Company.

If the Electric Company consents to deferred payment, any portion of said account not paid when due, shall thereafter bear interest at a reasonable rate.

1616 If payment is deferred without its consent, the Electric Company may, on reasonable notice, suspend or terminate its obligations hereunder.

Defective Material.

6. The Electric Company shall be liable under this contract only for direct damages arising from failure to exercise reasonable care and diligence in performing its obligations hereunder; and, in addition, as to any articles manufactured by the Electric Company, or specially inspected by it under Section 4 (g) above, which prove to be defective, the Electric Company shall be obligated either to replace the same at its own expense or to take back and allow full credit therefor.

Articles to be replaced F. O. B. factory or destination in accordance with delivery terms of the original shipment.

Arbitration.

7. Any question arising under this contract shall be referred for decision at the option of either party to such person or persons as the Presidents of the two Companies, parties hereto, may agree upon, and the decision of such person or persons or of a majority thereof shall be final and binding upon the parties hereto.

Delays.

8. Whereas, the due prosecution of the business of the
1617 Telephone Company requires that its apparatus, supplies and
material shall be promptly furnished and as herein provided;
and whereas, the time required to ascertain judicially whether the
Electric Company shall or shall not have failed to perform its obligations hereunder might cause a delay which would work damage to the Telephone Company, it is agreed that whenever the President of the Telephone Company shall be of the opinion that the Electric Company has failed or is likely to fail in its obligations in this respect, the Telephone Company may, without notice or demand, purchase elsewhere such apparatus, supplies and material as in its opinion may be required to meet the emergency, and it shall thereafter be determined by arbitration, as above provided, whether or not the opinion so acted upon by the Telephone Company was erroneous, and what, if any, damage resulted to either the Telephone Company or the Electric Company; and it is hereby agreed that any assessment for damages which said arbitrator or arbitrators may make in the premises shall be accepted and paid by the party so assessed as a just obligation.

Duration.

9. This contract shall become operative — — —, and shall remain in force thereafter until terminated by mutual agreement or by one year's notice in writing from either party to the other, or by the termination of the license from The American Bell
1618 Telephone Company to the Telephone Company or to the Electric Company.

In witness whereof, The parties hereto have caused these presents to be signed in their behalf by their respective officers thereunto duly authorized, and their corporate seal to be hereunto affixed the day and year first above written.

WESTERN ELECTRIC COMPANY, INC.,

By — — —, *President*.

Attest:

— — —, *Secretary*.

By — — —, *President*.

Attest:

— — —, *Secretary*.

No. 142.

This Exhibit contains copies of letters covering the Agreement between the Western Electric Company and The Southwestern Telegraph and Telephone Company with respect to the manufacture and purchase of supplies by the Western Electric Company.

The Exhibit is as follows:

1619 *Copies of Letters Covering the Contract Relations Between the Southwestern Telegraph and Telephone Company and the Western Electric Company, Inc., for the State of Texas.*

January 10, 1920.

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Index.

Page.	Subject.	Date.
1-2.	Stocks in Warehouse	Aug. 1, 1913.
3-6.	Handling Returned Material	June 1, 1919.
7.	Repair and Emergency Shop	Aug. 1, 1913.
8-9.	Lead Covered Cable	Oct. 1, 1918.
10.	Prepaying Transportation Charges	Aug. 1, 1913.
11.	Trucking Outgoing Material	Aug. 1, 1913.
12.	Handling A. B. Transmitters and Receivers	Aug. 1, 1913.
13.	Handling Stationery and Office Supplies ..	May 1, 1918.
14-34.	Inspection Charges	June 1, 1919.
35.	Purchasing Poles	Aug. 1, 1913.

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August 1, 1913.

Southwestern Tel. & Tel. Company,
C. A. Gates, General Manager,
Dallas, Texas.

DEAR SIR:

This letter is to outline the conditions under which, beginning August 1, 1913, we (hereinafter referred to as the Electric Company) will carry stocks in our warehouse to meet the requirements of your Company (hereinafter referred to as the Telephone Company).

Classification and Responsibility.

All stocks may be considered as coming under one of the following three classifications:

(1) Apparatus or material which is considered standard to the Telephone Company and standard to the Electric Company (i e., Western Electric Company apparatus manufactured under license from the American Bell Telephone Company, or approved by the American Telephone & Telegraph Company, and material of not Western Electric manufacture which is commercially standard).

The Electric Company will assume all responsibility for the maintenance of stocks of this class of material in reasonable quantities. The Telephone Company's estimates of the future requirements will neither constitute an authorization by it, nor an obligation on the Electric Company's part to purchase more than, in the latter's opinion, is a reasonable stock.

(2) Material which is standard to the Telephone Company but special to the Electric Company (i. e., Apparatus or material manufactured under the Telephone Company's own specifications, which is used regularly by the Telephone Company, but not in general use by other customers).

The Electric Company will stock material of this class in reasonable quantities without written authority for each purchase, but if the use of such material is abandoned, the Telephone Company will at the end of a reasonable period (within 60 days) relieve the Electric Company of the stock or reimburse it for any loss sustained in otherwise disposing of any reasonable quantity which it may have in its warehouse or for which it may have contracted.

(3) Material special to the Telephone Company and special to the Electric Company.

The Electric Company will purchase material of this class only upon the Telephone Company's written requisition. Such material shall be taken by the Telephone Company within a reasonable time (30 days) after they have been notified that it is subject to their order. If not, it shall thereafter be carried as "unusual Special" stock and be subject to the charges for carrying such stocks.

Reasonable Stock.

A reasonable stock represents the Telephone Company's average requirements based upon the usage for ordinary construction and maintenance during the preceding six months, together with proper consideration for seasonal demands, condition of the market and length of time required to transport material from the main sources of supply to the Electric Company's warehouse.

Unusual and Storm Stocks.

The purchase of quantities of Class- "I" and "2" stock in excess of a reasonable stock, whether in anticipation of prospective future development, to secure favorable prices, or as protection against possible emergencies, such as fires or storms, shall be made only upon the specific written authorization of the Telephone Company, and shall be subject to the charges for carrying such stocks.

Service.

The Electric Company agrees to purchase and carry, in addition to the reasonable stocks regularly provided, such special stocks as the Telephone Company may authorize, or as may accumulate, upon the following terms:

Classification.

Quantities of material coming under Classes "I" and "2," in excess of a reasonable stock, are termed "Special Stocks" and are of two kinds:

(1) "Unusual Stocks"—Quantities in excess of a reasonable stock, authorized by the Telephone Company for a special reason, such as to secure a favorable price, in anticipation of prospective future development, or as protection against storms.

(2) "Emergency Stock"—Central Office Equipment, authorized by the Telephone Company to be held indefinitely for emergency purposes. Such "Special Stocks" will be carried by the Western Electric Company in such quantities and for such time as the Telephone Company may authorize.

Remuneration.

For carrying "Special Stocks" as described above, the Electric Company will charge the Telephone Company monthly at the rate of 8% per annum of the average investment in this class of material. This charge to begin 30 days after the material is received 1625 and to continue until, upon the Telephone Company's authorization, the Electric Company takes it, in reasonable quantities, into its general stock, or otherwise disposes of it.

Yours truly,

WESTERN ELECTRIC COMPANY,
By R. W. VAN VALKENBURGH.

June 1, 1919.

Returned Material.

E. F. Carter, General Manager,
Southwestern Telegraph & Telephone Co.,
Dallas, Texas.

DEAR SIR:

This letter is to outline the conditions under which, beginning June 1, 1919, we (hereinafter referred to as the Electric Company) will handle returned material for your Company (hereinafter referred to as the Telephone Company).

1. Service.

(1.1) The Electric Company agrees to receive, store and reissue or dispose of apparatus or material returned by the Telephone 1626 Company in the following manner:

2. Delivery to Warehouse.

(2.1) All transportation and cartage charges applying on material returned to the Electric Company's warehouses, sub-warehouses or other points designated by the Electric Company, are to be borne by the Telephone Company.

3. Inspection and Classification.

(3.1) When received, the Electric Company will divide material into the following classes, based on such visual inspection as can be given by experienced warehouse employees, such classification to be subject to the approval of the Telephone Company.

(3.2) No other inspection is contemplated in the rates or remuneration specified in Section 6 of this Agreement.

Class "A."

(3.3) Telephonic appliances of Western Electric manufacture which the Telephone Company will not require within a reasonable time.

(3.4) Large lots of Class "A" material may be returned by the Telephone Company direct from the field to Hawthorne.

(3.5) Preliminary credit for such apparatus may be given 1627 at the Electric Company's allowance prices, and after it has been delivered to a space set aside for this class of material, the Telephone Company shall have no further responsibility. Final credit for this class of material cannot be issued until the material has been shipped to Hawthorne and their report of classification received; if a preliminary credit is issued by the local house, it shall be subject to adjustment to agree with the final report from Hawthorne.

Class "B."

(3.6) Material which is of no value except as junk.

(3.7) Space shall be provided for this material where it shall be kept until a sufficient quantity has accumulated to warrant disposition, when it will be sold and an adjustment made with the Telephone Company of the difference between the amount credited by the Electric Company and the actual proceeds of the sale.

(3.8) Large lots of Class "B" material may be returned by the Telephone Company direct from the field to the purchaser, as directed by the Electric Company.

(3.9) Class "B" material shall be credited when received at the current market price of junk of corresponding kinds. When it is sold an adjustment shall be made with the Telephone Company

for the difference between the amount credited by the Electric Company and the actual net proceeds of the sale.

Class "C."

(3.10) Apparatus and material of active types for which there is a probable demand within a reasonable time.

Class "D."

(3.11) All switchboard cords and plugs returned to the Electric Company for stock, repairs to be made if necessary.

Class- "C" and "D."

(3.12) Material of these classes shall be credited to the Telephone Company at the price of corresponding new material, and will be re-issued to the Telephone Company at the price allowed on the credit.

(3.13) If material so credited is not drawn from the Electric Company's warehouse within one year from the date of credit, it shall be subject to a carrying charge until it has been shipped to the Telephone Company or otherwise disposed of as authorized by the Telephone Company, the responsibility for the ultimate use or disposition of such material being with the Telephone Company.

4. Repairs.

(4.1) Necessary repairs to Class- "C" and "D" material shall be made under the terms of a supplementary agreement covering Section 4*D, and the cost of repairs shall be charged to the Telephone Company separately.

5. Insurance.

(5.1) For insurance purposes, Class "C" and "D" material in the Electric Company's warehouse shall be valued at 50% of the current new value of similar material, and the Electric Company shall insure on the basis of 80% of this valuation.

(5.2) In case of loss by fire, the Telephone Company shall reimburse the Electric Company in an amount equal to the difference between such insurance as the Electric Company may be able to collect on the Class "B," "C" and "D" material so lost and the amount credited to the Telephone Company by the Electric Company for such material.

6. Remuneration.

(6.1) For performing the services described in the foregoing, the Electric Company will charge the Telephone Company monthly, as follows:

- 1630
- (6.2) Class A: For receiving, classifying, delivering to proper space in the warehouse, crediting and keeping the records. } 1% of the value of all Class A material received at the warehouse and credited during the month.
- (6.3) Class B: For receiving, classifying, crediting, keeping records, storing, selling and handling from the time it is received in the warehouse until it has been disposed of. } 2½% of the selling price of Class B material sold from the warehouse during the month.
- (6.4) Class C: For receiving, classifying, issuing credit, keeping records, storing for a period not to exceed one year and reissuing or disposing of. } 7% of the value of all material credited as Class "C" during the month.
- (6.5) Class D: For receiving, storing for a period not exceeding one year, and reissuing or disposing of. } 2% of the value of all material credited as Class "D" during the month.
- (6.6) Direct Shipment: For keeping records and issuing credit for all classes of material which are returned direct from the Telephone Company to Hawthorne, or other purchaser. } ½% of 1% of the value of such material credited during the month.
- (6.7) Carrying Charge: For carrying Class "C" and "D" material after it has been in the possession of the Electric Company for 1 year. } 8% per annum of the average monthly investment in such material.

7. Payments.

(7.1) Payments for the credits allowed the Telephone Company are to be made by the Electric Company on the terms under which its invoices are rendered.

8. Termination.

This Agreement may be altered by mutual agreement or terminated upon three months' notice in writing from either party
1631 to the other.

WESTERN ELECTRIC COMPANY, INC.,
(Signed) By R. W. VAN VALKENBURGH.

June 1, 1919.

Exceptions to Preceding Letter.

Paragraph 3.5.

For the convenience of both Companies and to simplify the accounting in connection with Class "A" material, no credit shall be issued until final report of allowance is received from Hawthorne.

Paragraph 3.9.

Credit shall not be issued for Class "B" material until it is finally disposed of, thus avoiding the necessity of a preliminary credit and a subsequent adjustment.

Paragraph 3.11.

Due to the fact that but few cords and plugs are returned and that the total value is not sufficient to warrant a separate classification, all cords and plugs shall be classified "C."

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Paragraph 6.5.

The provisions of this paragraph shall not become effective for the reason that cords and plugs shall be considered Class "C," as indicated in Paragraph 3.9 above.

WESTERN ELECTRIC COMPANY, INC.,
(Signed) By R. W. VAN VALKENBURGH.

August 1, 1913.

Southwestern Tel. & Tel. Company,
C. A. Gates, General Manager,
Dallas, Texas.

DEAR SIR:

This letter is to outline the conditions under which, beginning August 1, 1913, we (hereinafter referred to as the Electric Company) will operate a local repair and emergency shop and recovery department for work required by your Company (hereinafter referred to as the Telephone Company).

Service.

The Electric Company agrees to operate Local Repair Shops on the following basis:

Repair and Emergency Shops.

A shop equipped to do the ordinary class of repairs to apparatus and material and to perform such emergency service as is required by the Telephone Company.

Recovery Shop.

A small department containing no machinery, but equipped to make minor or rub-up repairs to apparatus. All employees to be productive laborers, and the total output to be charged monthly without any detailed cost of the types of apparatus repaired.

Remuneration.

Repair and Emergency Shops.

So far as possible, standard repairs will be charged as agreed on flat prices, representing the Electric Company's cost; these prices to hold good until changes in costs of material and labor make a revision necessary. For any work not covered by standard prices, the Electric Company will charge actual cost of productive labor, plus 30% loading to cover shop expense, and material at prices usually charged your Company.

Recovery Shop.

The Electric Company will charge the Telephone Company monthly its actual cost of labor, plus 15% loading to cover department expenses and supervision expense, and material at prices usually charged your Company.

1634 Yours truly,

WESTERN ELECTRIC COMPANY,
By R. W. VAN VALKENBURGH.

October 1, 1918.

A. B. Elias, General Manager,
Southwestern Telegraph & Telephone Co.,
Dallas, Texas.

DEAR SIR:

This letter is to outline the conditions under which, beginning October 1, 1918, we (hereinafter referred to as the Electric Company) will warehouse and distribute lead covered cable for your Company (hereinafter referred to as the Telephone Company).

1. Service.

General.

(1.1) The Electric Company agrees to carry a reasonable stock of new lead covered cable for ordinary construction and maintenance purposes, and such second hand cable as the Telephone Company may return, on the following terms:

(1.2) Actual loss on short lengths of new or returned cable 1635 caused by the Telephone Company's orders for less than full reels shall be borne by the Telephone Company.

(1.3) Empty reels and lags may be returned to the Electric Company's warehouse or direct from the Telephone Company to the Electric Company's factory at Hawthorne.

New Cable.

(1.4) Instead of billing new cable shipped from local warehouse stock at 10% and 15% above factory cost, the Electric Company will bill all new cable shipped from its warehouses at the direct shipment rate of 8% above factory cost, plus transportation charges from the factory and cartage charges to the Electric Company's warehouse.

Emergency Stock of Cable.

(1.5) Stocks of cable authorized by the Telephone Company to be held for emergency purposes or unusual stocks, shall be carried under the terms of the 4 (b) supplementary agreement.

Returned Cable.

(1.6) Cable fit for re-use returned by the Telephone Company shall be placed in stock and credit given the Telephone Company at current prices of new cable of corresponding type. It shall 1636 be billed the Telephone Company when shipped at the price credited.

(1.7) Returned cable which has been on hand for one year shall be subject to a carrying charge until it has been shipped to, or otherwise disposed of, by the Telephone Company.

2. Remuneration.

(2.1) For performing the services described in Section 1, the Electric Company will charge the Telephone Company as follows:

(2.2) 3% of the billing price of all new and returned cable shipped from warehouse stock, including emergency and unusual stocks and including the value of reels and lags.

(2.3) 3% of the credit price of cable returned to the warehouse, including the value of reels and lags.

(2.4) For carrying returned cable which has been on hand for one year, the Electric Company shall charge the Telephone Company monthly at the rate of 8% per annum on the average investment in such cable, including the value of reels and lags.

(2.5) Empty reels returned to the warehouse shall be subject to the rates of remuneration specified in paragraphs 2.2, 2.3 and 2.4 of this Agreement.

(2.6) To cover the clerical expense in connection with 1637 empty reels and lags returned from the Telephone Company direct to Hawthorne, the Electric Company shall charge the Telephone Company $\frac{1}{2}$ of 1% of the amount of the credit for such reels and lags.

(2.7) The remuneration specified in paragraphs 2.2, 2.3, 2.4 and 2.5 of this Agreement, may be applied on each bill or credit rendered by the Electric Company for such material or included in a monthly special service bill, at the discretion of the Telephone Company.

3. Termination.

This agreement may be altered by mutual agreement or terminated upon three months' notice in writing from either party to the other.

Yours truly,

WESTERN ELECTRIC COMPANY, INC.,
By R. W. VAN VALKENBURGH.

August 1, 1913.

Southwestern Tel. & Tel. Company,
C. A. Gates, General Manager,
Dallas, Texas.

DEAR SIR:

1638 This letter is to outline the conditions under which, beginning August 1, 1913, we (hereinafter referred to as the Electric Company) will prepay transportation charges on shipments made your Company (hereinafter referred to as the Telephone Company), and take up and adjust claims with carriers.

Service.

The Electric Company will prepay transportation charges on shipments to the Telephone Company, and adjust claims with carriers.

Remuneration.

For performing this service the Electric Company will make a monthly charge of \$80.00, representing approximately its cost of

doing the work and interest for a period of forty-five days on the total amount of money advanced each month.

Yours truly,

WESTERN ELECTRIC COMPANY,
By R. W. VAN VALKENBURGH.

August 1, 1913.

Southwestern Tel. & Tel. Company,
C. A. Gates, General Manager,
Dallas, Texas.

1639 DEAR SIR:

This letter is to outline the conditions under which, beginning August 1, 1913, we (hereinafter referred to as the Electric Company) will supervise cartage, except that covering the hauling of new material to the Electric Company's warehouse, as requested by your Company (hereinafter referred to as the Telephone Company).

Service.

The Electric Company agrees to handle the trucking of outgoing material from its warehouse to the proper freight terminal or other points designated by the Telephone Company, and incoming returned material from the freight terminals or other points to its warehouses.

Remuneration.

The Electric Company will render a monthly bill covering its actual cost of truck hire, plus 6% to cover the cost of supervision of trucks and necessary clerical work.

Yours truly,

WESTERN ELECTRIC COMPANY,
By R. W. VAN VALKENBURGH.

1640

August 1, 1913.

Southwestern Tel. & Tel. Company,
C. A. Gates, General Manager,
Dallas, Texas.

DEAR SIR:

This letter is to outline the conditions under which, beginning August 1, 1913, we (hereinafter referred to as the Electric Company) will receive, store and deliver telephone and transmitters for your Company (hereinafter referred to as the Telephone Company).

Service.

The Electric Company agrees to receive, store, deliver and keep records of American Bell instruments on the following terms:

Receiving.

The expense of receiving and delivering returned instruments to the American Bell Distributing Station shall be included in the charge for special service covering returned goods, classified as "A," "B" and "C."

Storing, Receiving, and Keeping Records.

From the time returned instruments are delivered to the Distributing Station, all expense incidental to storing, shipping and keeping records shall be borne by the American Bell Telephone Company, and no further charge shall be made against the Telephone Company. All expenses incurred by the Electric Company in connection with the handling of new American Bell instruments shall be borne by the American Bell Telephone Company.

Yours truly,

WESTERN ELECTRIC COMPANY,
By R. W. VAN VALKENBURGH.

Mr. A. B. Elias, General Manager,
Southwestern Telegraph & Telephone Co.,
Dallas, Texas.

May 1, 1918.

DEAR SIR:

This letter is to outline the conditions under which, beginning May 1, 1918, we (hereinafter referred to as the Electric Company) will warehouse and distribute stationery and office supplies for your Company (hereinafter referred to as the Telephone Company).

1. To simplify the accounting for stationery and office supplies, it is agreed that they shall be billed to the Telephone Company when they are received in the Electric Company's warehouse and that no bills shall be rendered when shipment is made from the warehouse to the Telephone Company.

2. Under this arrangement the Telephone Company carries the investment in this class of material while it is in the Electric Company's warehouse; the remuneration rate of 6% contemplates that the Electric Company shall carry an investment in warehouse stocks equal to sixty days' requirements. It is therefore agreed that stationery and office supplies handled under this routine shall be billed to the Telephone Company as specified, except that the percentage over cost shall be five (5) instead of six (6).

3. This Agreement may be altered by mutual consent or cancelled upon three months' notice in writing from either party to the other.

Yours truly,

WESTERN ELECTRIC COMPANY, INC.,
By R. W. VAN VALKENBURGH.

August 1, 1913.

Southwestern Tel. & Tel. Company,
C. A. Gates, General Manager,
Dallas, Texas.

DEAR SIR:

1643 This letter is to outline the conditions under which, beginning August 1, 1913, we (hereinafter referred to as the Electric Company) will inspect articles not made by the Western Electric Company as requested by your Company (hereinafter referred to as the Telephone Company).

Service.

The Electric Company agrees to inspect such material of Not W. E. manufacture as the Telephone Company may designate,—a list of such material to Form Supplement (B) to this letter.

Remuneration.

Supplement (A) to this letter is a list of the standard inspection charges in force at present. These prices represent actual cost to the Electric Company and are subject to revision.

Where standard inspection charges are available, they shall be included in the price of the material. Where there are no standard charges, inspection shall be billed as a separate item at actual cost to the Electric Company, plus a reasonable loading for supervision.

Yours truly,

WESTERN ELECTRIC COMPANY,
By R. W. VAN VALKENBURGH.

1644 NOTE.—New Supplement ("A") became effective June 1, 1919.

May 28, 1919.

Supply Agreement—Inspection Charges.

Supv. of Supplies,
The S. W. T. & T. Co.:

We are enclosing details of a new method for handling the cost of inspecting not WE material purchased for telephone customers.

Effective June 1, 1919, and continuing until further notice, inspection of all material for "A" and "B" customers will be charged at standard percentage rates as listed in Appendix "C" of this supplement. It will be observed that items on which inspection is required have been divided into fourteen groups, representing various classes of apparatus, material, tools and supplies.

Standard percentage rates have been established for each group which, when applied to the value of the material, will represent the Western Electric Company's charge against the Telephone Company for inspection. Rates are subject to change when warranted by change in cost.

Under the present system, the old system, a tremendous amount of clerical work is involved in order to accumulate data necessary for the revision of standard inspection rates to meet continually changing conditions, and often by the time the new rates are established, conditions are again changed, resulting in a heavy loss or excessive profit in the particular account affected.

Furthermore, the heavy expense incurred in keeping actual cost records on standard rate accounts and on individual items billed at cost, has to be absorbed and is reflected in the standard rate established and on inspection charges at actual cost.

Under the new method the clerical work involved in keeping records of cost and changing standard percentage rates will be relatively light, and changes may be made much more easily and promptly to meet existing conditions, with the result that our billing will be more nearly representative of the actual cost.

When making comparisons by applying the same percentage rate to items which are of a similar character but which vary considerably in price, you will doubtless notice certain inconsistencies, but it should be borne in mind that this plan is based on averages and that it is simply a method of assessing against the various telephone companies the Western Electric Company's cost of inspecting not WE material.

(Signed)

L. A. DAVIES,
Stores Manager W. E. Company.

1646

Effective June 1, 1919.

Supplement "A."

Effective June 1, 1919, and until further notice, inspection of all material for "A" and "B" customers will be charged to them at standard percentage rates as listed in Appendix "C" of this Supplement. All active items on which inspection is required have been divided into fourteen groups representing various classes of apparatus, materials, tools and supplies.

Standard percentage rates have been established for each group, which when applied by the distributing houses to the value of the material, will represent our charge against the customer for inspection. These rates are based on the Engineering Department's records of cost of inspection and are subject to revision when warranted by changes in cost.

Appendix "A" of this Supplement is an alphabetical list of active items, showing the number of the group to which each has been assigned.

Appendix "B" contains the same items as Appendix "A" classified into groups.

Appendix "C" is a description of the various groups, the standard percentage rate of inspection to become effective June 1st being shown, opposite the respective group numbers.

1647 The fact that an item appears in Appendices "A" and "B" does not necessarily mean that inspection of that item is called for by all companies, and each house should call for inspection only on the basis of instructions from the companies for whom they buy.

When inspections are waived a report to that effect will be mailed immediately by the Inspection Department to the distributing house concerned, in order that inspection charges shall not be billed to the customer. If the distributing house calls for inspection of an item which is not included in any of the fourteen groups covered in Appendices "A" and "B", they should communicate immediately with the Assistant Contract Sales Manager, who will advise at once under what group the item should be placed.

This new method of handling inspection expense eliminates all billing of inspection charges to the distributing house by the supplier, the Inspection Department and the Broadway Accounting Division; the distributing houses are, therefore, responsible for seeing that inspection at the standard percentage rate is included in their bills to customers on all items inspected, and it is important that the local routine be such that it will prevent failure to bill for inspection expense.

Suppliers' bills covering shipments made on or after June 1, 1919, which include inspection charges, should be returned for correction.

1648 Upon receipt of an invoice from a supplier covering inspected material shipped either direct or into stock the distributing house clerk handling inspection charges, shall refer to either Appendix "A" or "B" of this supplement and determine into which group the material in question has been classified. After determining the group number, Appendix "C" should be referred to and the standard percentage rate for that group should be applied to the net cost of the material, after deducting all discounts, but not including freight, cartage, packing, etc.

When inspection charges on either direct shipments or shipments into stock have been determined on the basis outlined, the invoices should be backed up showing the total amount of inspection to be charged and the group number under which the item has been classified. Inspection costs which form a part of the unit price on stock items must be shown as a separate item on the back of the suppliers' invoice.

The distributing house clerk handling inspection charges should keep a daily record of the amount of inspection billed under each group and make a monthly summary of all such charges, which should be credited to the Broadway Accounting Division each month. Only one credit form is necessary; the amount credited to each group, however, must be shown separately.

As the distributing houses must render credit covering inspection charges in the same month in which the material is billed to them by the supplier, it will not be possible for the voucher clerk to make up the monthly credit summary from the daily payments as credit would not be received during the proper month on invoices payable in 30, 60 or 90 days. It is, therefore, recommended that this work be assigned to the buyer or clerk who terms invoices and checks prices, as the inspection charges can be added at the same time and it would involve but little extra work for this clerk to keep a daily record of these charges, which could be summarized at the end of the month.

It is further recommended that the clerk figuring inspection charges be required to indicate on the back of the supplier's invoice by a symbol that inspection charges have been posted to the monthly credit summary, and the voucher clerk be required to check all invoices showing inspection charges for this symbol, to insure that proper credit is rendered.

APPENDIX "A."

Alphabetical List of Items on Which Standard Percentage Rates Have Been Established.

Items.	Group No.	Items.	Group No.
Ammeters	13	Blocks, Crescoted Anchor	9
Anchor, Guy	5	Blocks, Cable	9
Anchor, Screw	5	Blocks, Connecting	13
Arms, Cable	5	Blocks, Fuse	13
1650			
Arms, Resonator	13	Blocks, Wood House	14
Arresters, Lightning	14	Blocks, Protector	13
Awls, Installers	12	Blocks, Pulley	12
Axes	12	Blocks, Snatch	12
Axles, Reel	5	Blocks, Porcelain Terminal	13
		Blocks, Crescoted Tree	9
Backboards	14	Blocks, Wood Wall	14
Bags for Telephone Booths	14	Bluestone	14
Bags for Misc. Supplies	14	Boards, Bulletin	14
Bags, Cord	12	Boards, Butting	12
Bags, Construction Tool	12	Boards, Running	12
Bags, Installers' Tool	12	Bolts, Type "C"	4
Bags, Trouble Kit	12	Bolts, Carriage	4
Balconies, Pole	5	Bolts, Cross Arm	4
Bands, Steel for Poles	5	Bolts, Dead Ending	4
Bars, Digging	12	Bolts, Double End	4
Bars, File	14	Bolts, Eye	4

Bars, Manhole	5	Bolts, Expansion	4
Bars, Manhole Locking.....	5	Bolts, Guy Clamp	4
Bars, Punch	12	Bolts, Large Head	4
Bars, Tamping	12	Bolts, Rock Guy Standard and Special.....	4
Batten, Fence	14	Bolts, Tree Guy	4
Battery Material	14	Bolts, Machine	4
Beading for Frame Moulding.....	14		

1651

Beams "I"	5	Bolts, Sounder	4
Beeswax	14	Bolts, Stove	4
Bells, Electric	14	Booths, Telephone & Parts.....	14
Belts, Body	12	Booths, Miniature Telephone.....	14
Belts, Tool	12	Boxes, Battery	14
Benches, Oak Work.....	14	Boxes, Inside Cable	13
Bends, Cast Iron	5	Boxes, Outside Cable	13
Bends, Pipe	5	Boxes, Call	13
Binding, Cotton Stay	14	Boxes, Compartment & Stock.....	14
Bins, Excelsior	14	Boxes, Jack	13
Bits, Car	12	Boxes, Leak	13
Bits, Twist Stock	12	Boxes, Metal	14
Blankets, Asbestos	14	Boxes, Paint	14
Boxes, Pencil	14	Cans, Ash—Rubbish Garbage.....	14
Boxes, Receptacle & Cover.....	14	Canvas	14
Boxes, Line Resistance	13	Caps, Steel Cone	14
Boxes, Trans. Switch	13	Caps, Pipe	5
Boxes, Terminal	13	Carbolineum, For Open Tank Treatment.....	9
Boxes, Tote	14	Cars, Cable	5
Boxes, Trailing	14	Cartridge, Trouble Chute.....	14

APPENDIX "A."—Continued.

	Group No.	Items.	Group No.	Items.
Boxes, Ticket	14	Casings, Storage Battery	14	
Boxes, Tool	12	Castings, Conduit	5	
Boxes, Trouble	14	Castings, Manhole	5	
Braces, Back	5	Celluloids for No. Plates	14	
Braces, Pole Balcony	5			
1652				
Braces, Cross Arm	5	Chains, Guard	12	
Braces, Ext. Fixture Back	5	Chains, Guy	12	
Braces, Ext. Fixt. Diagonal	5	Chains, Pole	12	
Braces, Ext. Fixt. Vertical	5	Chains, Pulling Out	12	
Braces, Creosoted Pole	9	Chains, Directory	14	
Braces, For Pole Seats	3	Chairs, Trolley	5	
Brackets, Corner	5	Chairs, Operator's—Wood	14	
Brackets, Distributing	5	Chairs, Operator's—Steel	14	
Brackets, Drop—For Porcelain Insulators	5	Chisels	12	
Brackets, Electric Light	5	Chromac	14	
Brackets, House, Iron	5	Clamps, Cable	4	
Brackets, Wooden, House	7	Clamps, Long Saut Cable	4	
Brackets, Meter	14	Clamps, Cable Box	4	
Brackets, Mounting	5	Clamps, Crossover	4	
Brackets, Protector Mounting	5	Clamps, Cross Connecting	4	
Brackets, Creo. Pole Line	7	Clamps, Dead Ending	4	
Brackets, Iron Pole Line	5	Clamps, Ground	4	
Brackets, Transportation Drop	5	Clamps, 2 Bolt Guy	4	

Brackets, Wall	5	Clamps, 3 Bolt Guy	4
Buckets, Canvas	14	Clamps, Haven	12
Buckles	12	Clamps, Malleable Iron	4
Bucks, Gainers	12	Clamps, Pothead	4
Buggies, Cable	5	Clamps, Splicing	12
Bushings	14	Clamps, Suspension	4
Buttons, Porcelain Filler	13	Clamps, Terminal	4
1653			
Buttons, Push	14	Clamps, Wire Rope	4
Butts, For Exp. Ladders	14	Cleaners, Hole	12
Buzzers	14	Cleaners, Jack	14
Cabinets, Filing	14	Cleats, Cross Arm	9
Cabinets, Pigeon Hole	14	Cleats, Fibre	14
Cabinets, Wood	14	Cleats, Iron	5
Cable, Aerial	3	Cleats, Wood	14
Cable, Bridle	3	Cleices, Double	5
Cable, Emergency	3	Climbers, Lineman's	12
Cable, L. C. Paper Insulated	3	Clips, Lineman's Test	14
Cable, L. C. Rubber Insulated	3	Clips, Switchboard Ticket	14
Cable, Office	3	Clips, Transposing	14
Cable, Submarine	3	Clocks	13
Cable, Switchboard	3	Cobs, Wood (For Steel Pins)	9
Condensers	13	Coils, Detector	13
Conduit, Vitriified Clay	10	Files	12
Conduit, Creosoted Wood	8	Files, Contact	14
Connectors, Copper	14	Finders, Adjustable Splicers	12
Connectors, Iron	14	Fixtures, Lighting	14
Connectors, 7-A Line	14	Fixtures, Sign	14

APPENDIX "A."—Continued.

Items.	Group No.	Items.	Group No.
Connectors, Strand	5	Fixtures, Illuminated Sign	14
Coppers, Battery	14	Flags, Red Trucking	14
Coppers, Soldering	12	Forks, Raising	12
Cord, In Bags & On Rolls	14	Framework, Switchboard	13
		Frames and Fixtures	14
1654			
Cords	14	Frames, Advertising	14
Couplings, Conduit	5	Frames, Bronze	14
Couplings, Flange for Copper Tubing	5	Frames, Manhole	5
Couplings, Reducing	5	Frames, No. Plate	14
Covers, Ash Can	14	Frames, Sign	14
Covers, Cable Box	12	Frames, Wall Distributing	13
Covers, Manhole	5	Funnels	14
Covers, Sand Pail	14	Furniture	14
Cranes, Galvanized	5	Fuses	13
Cranes, Sign	5	Gaskets for Floor Outlets	14
Creosote	9	Gaskets, Manhole	14
Cross Arms, Cedar	8	Gauges, Bell	12
Cross Arms, Creosoted	8	Gear, Iron Chafing	5
Cross Arms, Cypress	8	Generators, Motor	13
Cross Arms, Fir	8	Globes, Canteen Sign	14
Cross Arms, Pine	8	Gloves, Rubber	14
Cross Arms, Iron or Steel	5	Grips, Buffalo	12
Cross Arms, Juniper	8	Guards, Axe	12
Cross Arms, Painted	8	Guards, Iron Cable	5

Cross Arms, Unpainted or Uncreosoted.....	8	Guards, Cribbing.....	5
Cutouts.....	13	Guards, Hub.....	5
Deadmen.....	12	Guards, Lamp.....	14
Dinky Pole.....	12	Guards, Manhole.....	12
Dogs, Cable.....	5	Guards, Wood Tree.....	14
1655			
Doors for Battery Cabinets.....	14	Hambroline.....	14
Dressers, Cable.....	12	Hammers.....	12
Drills.....	12	Handles, Cant Hook.....	12
Drills, Pipe.....	12	Handles, Chisel.....	12
Drills, Rock.....	12	Handles, Digging Spoon.....	12
Drills, Star.....	12	Handles, Droplight.....	12
Drivers, Screw.....	12	Handles, Hammer.....	12
Ejectors, For Star Drill.....	12	Handles for Lug Hook.....	12
Extractors, Lamp Cap.....	12	Handles, Peavie.....	12
Eyes, Manhole.....	5	Handles, Raising Fork.....	12
Eyes, Screw.....	5	Handles, Shovel.....	12
Fasteners, Radiator.....	5	Handles, Digging Slick.....	12
Ferrules.....	14	Handles, Misc. Tool.....	12
Hangers, Cable Box.....	5	Handles, Trimmer Tree.....	12
Hangers, Marlin Aerial Cable.....	14	Knives, Draw.....	12
Hangers, Bridle Cable.....	5	Knives, Pruning.....	12
Hangers, Pipe.....	5	Knobs, Porcelain.....	11
Hangers, Wire, Long Span.....	5	Ladders, Extension.....	12
Hangers for Running Blocks.....	5	Ladders, Manhole.....	12
Haversack, Lineman's.....	12	Ladders, Sectional.....	12
Holders, Asbestos Blanket.....	14	Ladders, Step.....	12
Holders, Blank.....	14	Lockers.....	14

APPENDIX "A."—Continued.

	Group No.	Items.	Group No.	Items.
Holders, Card	14	Lamps	13	
1656				
Holders, Star Drill	12	Lamps, Resistance	13	
Holders, Soldering Iron	12	Lamps, Signal	13	
Holders, Ticket Pad	14	Logs, Creosoted Anchor	9	
Hoods, Resonator	13	Magazine, Dynamite Hand	14	
Hooks, Brush	12	Mallets	12	
Hooks, Cable	5	Micas for Cutouts	14	
Hooks, Cable Rack	5	Mil Ammeters	13	
Hooks, Cant	12	Mirrors, Splicers	14	
Hooks, Carrying	12	Mountings, Booth	14	
Hooks, Fire Extinguisher Bracket	14	Mountings, Protector	13	
Hooks, Guy	5	Mountings, Resistance	13	
Hooks, Lug	12	Mountings, Thermometer	14	
Hooks, Manhole	5	Nails	5	
Hooks, Pipe	5	Nuts	5	
Hooks, Reinforcing	5	Outlets, Floor	14	
Hooks, Shave	12	Padlocks and Chains	14	
Hooks, Sharp	12	Pails, Fire and Sand	14	
Hooks, Wall	14	Paint	14	
Houseline, Marlin	14	Panels, End for Telephone Booth	14	
Hydrometers	14	Panels, Filler	13	
Instruments, Measuring	13			
Insulators, Bridle Wire	11			

Insulators, Electrore	11		
Insulators, Glass	11		
1657			
Insulators, D. P. Porcelain	11	Panels, Emergency Fuse	13
Insulators, Strain	11	Panels, Jack	13
Irons, Angle for Xarms	5	Panels, Lamp	13
Irons, Battery	14	Pans, Splicers Catch	12
Irons, Break	5	Pans, Ground	14
Irons, Guard	5	Paraffine	14
Irons, Pull In	5	Parts for Emergency Reels	5
Irons, Window	5	Peavies	12
Jacks	13	Pickaroons	12
Joints, Expansion	5	Picks	12
Kettles, Paraffine	14	Pick, Pole	12
Keys, Telegraph	13	Picks, Test	12
Knives, Battery	12	Pins, Break Iron	5
Knives, Chipping	12	Pins, Dowel	5
Pins, Rock Elm	7	Pins, Ground	5
Pins, Tarnsposition	5	Pins, Insulator Steel	5
Pins, Other Wood Insulator	7	Rings, Ordinary Bridle and Dist.	5
Pipe, Vit. Clay Sewer	10	Rings, Corner Bridle	5
Pipe, Iron and Steel	5	Rings, Aerial Cable	5
Plank, Creosoted Anchor	9	Rings, Self Clamping Cable	5
Plank, Creosoted Conduit	9	Rings, Dist. Drive	5
Plates, Guy	5	Rings, Pole	5
Plates, Number	14	Rings, Dist. Pole	5
		Rings, Porcelain Wiring	5
		Rods, Conduit	12

APPENDIX "A."—Continued.

1658	Group No.	Items.	Group No.	Items.	Group No.
Plates, Strain	5	Rods, Ground	5	Rods, Ground	5
Pliers	12	Rods, Guy	5	Rods, Guy	5
Plugs, Conduit or Drift.	9	Rolls, Tool	12	Rolls, Tool	12
Plugs, Fibre	14	Rope	14	Rope	14
Plugs, Split	13	Rubber, Para	14	Rubber, Para	14
Plugs, Traffic	12	Satchels	12	Satchels	12
Pole, Changers Gravity Battery ..	13	Saws, Crosscut	12	Saws, Crosscut	12
Poles, Creosoted	6	Saws, Hand	12	Saws, Hand	12
Poles, Cypress	9	Saws, Keyhole	12	Saws, Keyhole	12
Poles, Pike	12	Scoops, Sand	12	Scoops, Sand	12
Poles, Sawn Redwood	9	Scrap Copper	14	Scrap Copper	14
Poles, Steel	5	Screws, Galvanized	5	Screws, Galvanized	5
Poles, Unpainted and Uncreosoted ..	9	Screws, Lag-Fetter and Twist Drive ..	4	Screws, Lag-Fetter and Twist Drive ..	4
Posts, Binding	14	Screws, Wood and Machine	14	Screws, Wood and Machine	14
Pots, Compound	12	Seals, Square Cording	14	Seals, Square Cording	14
Pots, Paraffine	12	Seats for Telephone Booths	14	Seats for Telephone Booths	14
Pots, Solder	12	Seats, Cable Box	5	Seats, Cable Box	5
Protectors	13	Seats, Pole	5	Seats, Pole	5
Protectors, Iron Cable	5	Sets, Anti-Noise	13	Sets, Anti-Noise	13
Pulleys	12	Sets, Twist Drill	12	Sets, Twist Drill	12
Pumps, Suction or Manhole	12	Sets, Learners	13	Sets, Learners	13
Punches, Cotton Sleeve	12	Sets, Telegraph Repeater	13	Sets, Telegraph Repeater	13
Racks, Bicycle	14	Sets, Shellac	14	Sets, Shellac	14
1659					
Racks, Cable	5	Sets, Stencil	14	Sets, Stencil	14

Racks, Message	14	Sets, Test	13
Racks, Reel	5	Shelves for Telephone Booth	14
Racks, Resistance Lamp	13	Shelves, Folding	14
Racks, Wood	14	Shelves, Furnace	12
Rammers, Concrete	12	Shelves, Switchboard	13
Receptacles, Call Box	13	Shields for Expansion Bolts	14
Receptacles, Lamp	13	Shields, Iron Cable	5
Reducers, Conduit	5	Shields, Wood Cable	9
Reels	12	Shields, Sheet Iron Duct	5
Registers, Double Pan	13	Shields, Lamp Rack Wiring	13
Regulators, Combination	13	Shoes, Cable Bending	12
Relays and Accessories	13	Shovels	12
Relays, Polar	13	Signs	14
Resonators, Arm	13	Sleeves, Copper Cable	14
Retainers, Message	14	Sleeves, Copper Connecting	14
Rheostats	13	Sleeves for Copper Tubing	5
Rings, Body Belt	12	Sleeves, Tinned Copper Slotted	14
Sleeves, Iron Connecting	14	Switches	13
Sleeves, Lead	14	Syringes, Battery	14
Sleeves, Linen	14	Tables, Wood and Steel	14
Sleeves, Paper	14	Tags, Linen	14
Sleeves, Tinned Steel	14	Tags, Linen Cable	14
Sleeving Cotton	14	Tape, Adhesive	14
Slicks, Digging	12		
1660			
Sockets, Lamp	13	Tape, Tarred Cable	14
Solder	14	Tape, Cotton	14
Sounders	13	Tape, Friction	14

APPENDIX "A."—Continued.

Items.	Group No.	Items.	Group No.
Spindles and Washers for Reels.....	5	Tape, Linen	14
Spoons, Digging	12	Tape, Linen Measuring.....	14
Springs, Adjustable Relay.....	13	Tape, Rubber	14
Springs, Key Sounder and Relay.....	13	Tar, Dead Oil of Coal.....	9
Standards, Lamp	13	Tarpaulins	14
Standards, Message Clips.....	14	Tents	14
Standards, Furnace	12	Terminals, Cable	14
Standards, Oil Set.....	12	Thimbles	5
Standards, Resonator	13	Timbers, Y. P. Plain and Creosoted.....	9
Staples	5	Tips, Gas Lighter	12
Stencils	14	Tongs, Carrying	12
Steps for Concrete Poles.....	5	Tongs, Pole	12
Steps for Creosoted Pole.....	7	Tools, Adjuster Relay Keys and Jacks.....	12
Steps, Iron Pole.....	5	Tools, Digging	12
Stirrups, Cable Susp.....	5	Tools, Pole Raising.....	12
Strand, Galv. Steel.....	2	Tools, Pulling	12
Strand, Galv. Suspension.....	2	Tools, Splicers Cable.....	12
Straps, Angle Iron.....	5	Tools, Wood Cutting	12
Straps, Cable	5	Transmitters, Telegraph	13
Straps, Cable Box.....	5	Trays, Wood Battery.....	14
Straps, Climber	12	Trays, Desk	14
1661			
Straps, Galvanized	5	Trimmers, Tree	12
Straps, Loop	5	Trolleys, Cable	5

Straps, Pipe	5	Tubes, Porcelain	11
Straps, Reinforcing	5	Tubing, Copper	5
Straps for Solid or Split Porcelain Rings	5	Units, Dist. Frame & Parts	13
Straps, Safety	12	Units, Resistance	13
Straps, Wire Coil	14	Units, Test Panel	13
Strips, Designation	14	Varnish	14
Strips, Fanning	14	Vise	12
Strips, Flexible Text	14	Voltmeters	13
Studs, Pole	6	Volt Mil Ammeters	13
Studs, Creosoted Pole	6	Washers, Large	5
Studs, Manhole	5	Washers, Round	5
Supports, Angle Iron or Steel	5	Washers, Square	5
Supports, Cross Arm	5	Washers, Cupped	5
Supports, Loading Coil	5	Washers, Black Fibre	14
Supports, Pothead	14	Wire, Galv. Iron or Steel Line	2
Supports, Meter	13	Wire, W. P. Iron or Steel	3
Switchboards	13	Wire, Iron Tie	2
Washers, Saddle	5	Wire, Misc. B. R. C.	3
Wedges, Multiplex	14	Wire, B. R. C. Morse Circuit	3
Wedges, Fibre	14		
Wheels, Trolley	5		
Wire, Galvanized Armor	2		
1662			
Wire, Bridle	3	Wire, Office	3
Wire, Bronze	3	Wire, Pothead	3
Wire, H. D. Copper Line—Bare	1	Wire, Railroad Crossing	2
Wire, Copper—Steel Line—Bare	2	Wire, Galv. River Crossing	2
Wire, Copper Steel O. D.	3	Wire, Sub-station Ground	3

APPENDIX "A."—Continued.

Items.	Group No.	Items.	Group No.
Wire, Copper Tie	3	Wire, B. R. C. Switchboard	3
Wire, W. P. H. D. Copper	3	Wire, Tree	3
Wire, H. D. O. D. Copper	3	Wire, Trolley	1
Wire, W. P. Cross Connecting	3	Wrenches	12
Wire, Dist. Frame or Flame-proof	3	Wrenches, Cable Terminal	12
Wire, Inside	3	Zincs, Battery	14
Wire, B. R. C. Desk Instrument	3		

1663

APPENDIX "B."

Items Covered by Standard Percentage Rates Divided by Groups.

Group No 1.

Wire, H. D. Copper Line Bare.
Wire, Trolley.

Group No. 2.

Strand, Galv. Steel.
Strand, Galv. Suspension.
Wire, Galvanized Armor.
Wire, Copper Steel Line Bare.
Wire, Galv. Iron or Steel Line.
Wire, Iron Tie.
Wire, Railroad Crossing.
Wire, Galvanized River Crossing.

Group No. 3.

Cable, Aerial.
Cable, Bridle.
Cable, Emergency.
Cable, L. C. Paper Insulated.
Cable, L. C. Rubber Insulated.
Cable, Office.

1664

Group No. 3.

Wire, Tree.

Group No. 4.

Bolts, Type "C."
Bolts, Carriage.
Bolts, Cross Arm.
Bolts, Dead Ending.
Bolts, Double End.
Bolts, Eye.
Bolts, Expansion.
Bolts, Guy Clamp.
Bolts, Large Head.
Bolts, Rock Guy Standard & Special.
Bolts, Tree Guy.
Bolts, Machine.
Bolts, Sounder.
Bolts, Stove.

Cable, Submarine.
Cable, Switchboard.
Wire, Bridle.
Wire, Bronze.
Wire, Copper Steel O. D.
Wire, Copper Tie.
Wire, W. P. H. D. Copper
Wire, H. D. O. D. Copper
Wire, W. P. Cross Connecting.
Wire, Dist. Frame or Flameproof.
Wire, Inside.
Wire, B. R. C. Desk Instrument.
Wire, W. P. Iron or Steel.
Wire, Misc. B. R. C.
Wire, B. R. C. Morse Circuit.
Wire, Office.
Wire, Pothead.
Wire, Sub-station Ground.
Wire, B. R. C. Switchboard.

Clamps, Three Bolt Guy.
Clamps, Malleable Iron.
Clamps, Pothead.
Clamps, Suspension.
Clamps, Terminal.
Clamps, Wire Rope.
Screws, Lag Fetter & Twist Drive.

Group No. 5.

Anchors, Guy.
Anchors, Screw.
Arms, Cable.
Axles, Reel.
Balconies, Pole.
Bands, Steel for Poles.
Bars, Manhole.
Bars, Manhole Locking.
Beams, "I."
Bends, Cast Iron.
Bends, Pipe.

APPENDIX "B."—Continued.

Clamps, Cable.
 Clamps, Long Saut Cable.
 Clamps, Cable Box.
 Clamps, Crossover.
 Clamps, Cross Connecting.
 Clamps, Dead Ending.
 Clamps, Ground.
 Clamps, Two Bolt Guy.

1665

Braces, for Pole Seats.
 Brackets, Corner.
 Brackets, Distributing.
 Brackets, Drop for Porc. Insulators.
 Brackets, Electric Light.
 Brackets, House, Iron.
 Brackets, Mounting.
 Brackets, Protector Mounting.
 Brackets, Iron Pole Line.
 Brackets, Transposition Drop.
 Brackets, Wall.
 Buggies, Cable.
 Caps, Pipe.
 Cars, Cable.
 Castings, Conduit.
 Castings, Manhole.
 Chairs, Trolley.
 Cleats, Iron.
 Clevises, Double.
 Connectors, Strand.
 Couplings, Conduit.
 Couplings, Flange for Copper Tubing.
 Couplings, Reducing.
 Covers, Manhole.

1666

Irons, Break.
 Irons, Guard.
 Irons, Pulling In.
 Irons, Window.
 Joints, Expansion.
 Nails.
 Nuts.
 Parts for Emergency Reels
 Pins, Break Iron.
 Pins, Dowel.
 Pins, Ground.

Braces, Back.
 Braces, Pole Balcony.
 Braces, Cross Arm.
 Braces, Ext. Fixture Back.
 Braces, Ext. Fixture Diagonal.
 Braces, Ext. Fixture Vertical.

Cranes, Galvanized.
 Cranes, Sign.
 Cross Arms, Iron or Steel.
 Dogs, Cable.
 Eyes, Manhole.
 Eyes, Screw.
 Fasteners, Radiator.
 Frames, Manhole.
 Gear, Iron Chafing.
 Guards, Iron Cable.
 Guards, Cribbing.
 Guards, Hub.
 Hangers, Cable Box.
 Hangers, Bridle Cable.
 Hangers, Pipe.
 Hangers, Wire, Long Span.
 Hangers for Running Blocks.
 Hooks, Cable.
 Hooks, Cable Rock.
 Hooks, Guy.
 Hooks, Manhole.
 Hooks, Pipe.
 Hooks, Reinforcing.
 Irons, Angle for X arms.

Rings, Dist. Drive.
 Rings, Pole.
 Rings, Dist. Pole.
 Rings, Porcelain Wiring.
 Rods, Ground.
 Rods, Guy.
 Screws, Galvanized.
 Seats, Cable Box.
 Seats, Pole.
 Shields, Iron Cable.
 Shields, Sheet Iron Duct.

APPENDIX "B."—Continued.

Pins, Insulator Steel.
 Pins, Transposition Bracket.
 Pipe, Iron and Steel.
 Plates, Guy.
 Plates, Strain.
 Poles, Steel.
 Protectors, Iron Cable.
 Racks, Cable.
 Racks, Reel.
 Reducers, Conduit.
 Rings, Ordinary Bridle and Dist.
 Rings, Corner Bridle.
 Rings, Aerial Cable.
 Rings, Self-Clamping Cable.

1667

Studs, Manhole.
 Supports, Angle Iron or Steel.
 Supports, Cross Arm.
 Supports, Loading Coil.
 Supports, Pothead.
 Thimbles.
 Trolleys, Cable.
 Tubing, Copper.
 Washers, Large.
 Washers, Round.
 Washers, Square.
 Washers, Cupped.
 Washers, Saddle.
 Wheels, Trolley.

Group No. 6.

Poles, Creosoted.
 Stubs, Pole.
 Stubs, Creosoted Pole.

Group No. 7.

Brackets, Wooden House.
 Brackets, Creosoted Pole Line.
 Pins, Rock Elm.
 Pins, Other Wood Insulator.
 Steps, Creosoted Pole.

1668

Plugs, Conduit or Drift.
 Poles, Cypress.

Sleeves for Copper Tubing.
 Spindles & Washers for Reels.
 Staples.
 Steps for Concrete Poles.
 Steps, Iron Pole.
 Stirrups, Cable Susp.
 Straps, Angle Iron.
 Straps, Cable.
 Straps, Cable Box.
 Straps, Galvanized.
 Straps, Loop.
 Straps, Pipe.
 Straps, Reinforcing.
 Straps for Solid or Split Porcelain
 Rings.

Group No. 8.

Conduit, Creosoted Wood.
 Cross Arms, Cedar.
 Cross Arms, Creosoted.
 Cross Arms, Cypress.
 Cross Arms, Fir.
 Cross Arms, Pine.
 Cross Arms, Juniper.
 Cross Arms, Painted.
 Cross Arms, Unpainted or Un-
 creosoted.

Group No. 9.

Blocks, Creosoted Anchor.
 Blocks, Cable.
 Blocks, Creosoted Tree.
 Braces, Creosoted Pole.
 Carbolineum for Open Tank
 Treatment.
 Cleats, Cross Arm.
 Cobs, Wood (For Steel Pine).
 Creosote.
 Guards, Wood Cable.
 Logs, Creosoted Anchor.
 Plank, Creosoted Anchor.
 Plank, Creosoted Conduit.

Bags, Installers' Tool.
 Bags, Trouble Kit.

APPENDIX "B."—Continued.

Poles, Sawn Redwood.
 Poles, Unpainted and Uncreosoted.
 Shields, Wood Cable.
 Tar, Dead Oil of Coal.
 Timbers, Y. P. Plain and Creosoted.

Group No. 10.

Conduit, Vitrified Clay.
 Pipe, Vitrified Clay Sewer.

Group No. 11.

Insulators, Bridle Wire.
 Insulators, Electroze.
 Insulators, Glass.
 Insulators, D. P. Porcelain.
 Insulators, Strain.
 Knobs, Porcelain.
 Tubes, Porcelain.

Group No. 12.

Awls, Installers.
 Axes.
 Bags, Cord.
 Bags, Construction Tool.

1669

Coppers, Soldering.
 Covers, Cable Box.
 Deadmen.
 Dinkeys, Pole.
 Dressers, Cable.
 Drills.
 Drills, Pipe.
 Drills, Rock.
 Drills, Star.
 Drivers, Screw.
 Ejectors for Star Drills.
 Extractors, Lamp Cap.
 Files.
 Finders, Adjustable Splicers.
 Forks, Raising.
 Gauges, Bell.
 Grips, Buffalo.

Bars, Digging.
 Bars, Punch.
 Bars, Tamping.
 Belts, Body.
 Belts, Tool.
 Bits, Car.
 Bits, Twist Stock.
 Blocks, Pulley.
 Blocks, Snatch.
 Boards, Butting.
 Boards, Running.
 Boxes, Tool.
 Buckles.
 Bucks, Gainers.
 Chains, Guard.
 Chains, Guy.
 Chains, Pole.
 Chains, Pulling Out.
 Chisles.
 Clamps, Haven.
 Clamps, Splicing.
 Cleaners, Hole.
 Climbers, Lineman's.

Handles, Lug Hook.
 Handles, Peavie.
 Handles, Raising Fork.
 Handles, Shovel.
 Handles, Digging Slick.
 Handles, Misc. Tool.
 Handles, Trimmer Tree.
 Haversack, Lineman's.
 Holders, Star Drill.
 Holder, Soldering Iron.
 Hooks, Brush.
 Hooks, Cant.
 Hooks, Carrying.
 Hooks, Lug.
 Hooks, Shave.
 Hooks, Snap.
 Knives, Battery.

APPENDIX "B."—Continued.

Guards, Axe.
 Guards, Manhole.
 Hammers.
 Handles, Cant Hook.
 Handles, Chisel.
 Handles, Digging Spoon.
 Handles, Drop Light.
 Handles, Hammer.

1670

Knives, Chipping.
 Knives, Draw.
 Knives, Pruning.
 Ladders, Extension.
 Ladders, Manhole.
 Ladders, Sectional.
 Ladders, Step.
 Mallets.

Pans, Splicers' Catch.
 Peavies.
 Picks.
 Picks, Pole.
 Picks, Test.
 Pickaroons.
 Pliers.
 Plugs, Traffic.
 Poles, Pike.
 Pots, Compound.
 Pots, Paraffine.
 Pots, Solder.
 Pulleys.
 Pumps, Suction or Manhole.
 Punches, Cotton Sleeve.
 Rammers, Concrete.
 Reels.
 Rings, Body Belt.
 Rods, Conduit.
 Rolls, Tool.
 Satchels.
 Saws, Crosscut.
 Saws, Hand.
 Saws, Keyhole.
 Scoops, Sand.

1671 Group No. 13.

Ammeters.
 Arms, Resonator.
 Blocks, Connecting.
 Blocks, Fuse.
 Blocks, Protector.
 Blocks, Porcelain Terminal.
 Boxes, Inside Cable.
 Boxes, Outside Cable.
 Boxes, Call.
 Boxes, Jack.

Sets, Twist Drill.
 Shelves, Furnace.
 Shoes, Cable Bending.
 Shovels.
 Slicks, Digging.
 Spoons, Digging.
 Stands, Furnace.
 Stands, Oil Set.
 Straps, Climber.
 Straps, Safety.
 Tips, Gas Lighter.
 Tongs, Carrying.
 Tongs, Pole.
 Tools, Adjuster Relay.
 Tools, Key and Jacks.
 Tools, Digging.
 Tools, Pole Raising.
 Tools, Pulling.
 Tools, Splicers' Cable.
 Tools, Woodcutting.
 Trimmers, Tree.
 Twistors, Joint.
 Vise.
 Wrenches.
 Wrenches, Cable Terminal.

Instruments, Measuring.
 Jacks.
 Keys, Telegraph.
 Lamps.
 Lamps, Resistance.
 Lamps, Signal.
 Mil Ammeters.
 Mountings, Protector.
 Mountings, Resistance.
 Panels, Emergency Fuse.
 Panels, Filler.
 Panels, Jack.

APPENDIX "B."—Continued.

Boxes, Leak.
 Boxes, Line Resistance.
 Boxes, Trans. Switch.
 Boxes, Terminal.
 Buttons, Porcelain Filler.
 Clocks.
 Coils, Detector.
 Condensers.
 Cutouts.
 Framework, Switchboard.
 Frames—Wall Distributing.
 Fuses.
 Generators, Motor.
 Hoods, Resonator.

1672

Sets, Anti-Noise.
 Sets, Leaners.
 Sets, Telegraph Repeater.
 Sets, Test.
 Shelves, Switchboard.
 Shields, Lamp Rack Wiring.
 Sockets, Lamp.
 Sounders.
 Springs, Adjustable Relay.
 Springs, Kev Sounder and Relay.
 Standards, Lamp.
 Stands, Resonator.
 Switchboards.
 Switches.
 Transmitters, Telegraph.
 Units, Dist. Frame and Parts.
 Units, Resistance.
 Units, Test Panel.
 Voltmeters.
 Volt Mil Ammeters.

Group No. 14.

Arresters, Lightning.
 Backboards.
 Backs for Telephone Booths.

1673

Boxes, Ticket.
 Boxes, Trouble.
 Boxes, Meter.
 Buckets, Canvas.

Panels, Lamp.
 Plugs, Split.
 Pole Changers Gravity Battery.
 Protectors.
 Racks, Resistance Lamp.
 Receptacles, Call Box.
 Receptacles, Lamp.
 Registers, Double pen.
 Regulators, Combination.
 Relays and Accessories.
 Relaps, Polar.
 Resonators, Arm.
 Rheostats.

Bags, For Misc. Supplies.
 Bars, File.
 Batten, Fence.
 Battery Material.
 Beading for Frame Moulding.
 Beeswax.
 Bells, Electric.
 Benches, Oak Work.
 Binding, Cotton Stay.
 Bins, Excelsior.
 Blankets, Asbestos.
 Blocks, Wood House.
 Blocks, Wood Wall.
 Bluestone.
 Boards, Bulletin.
 Booths, Telephone.
 Booths, Miniature Telephone.
 Boxes, Battery.
 Boxes, Compartment and Stock.
 Boxes, Metal.
 Boxes, Paint.
 Boxes, Pencil.
 Boxes, Receptacle and Covers.
 Boxes, Tote.
 Boxes, Trailing.

Clips, Switchboard Ticket.
 Clips, Transposing.
 Connectors, Copper.
 Connectors, Iron.

APPENDIX "B."—Continued.

Bushings.
 Buttons, Push.
 Butts for Exp. Ladders.
 Buzzers.
 Cabinets, Filing.
 Cabinets, Pigeon Hole.
 Cabinets, Wood.
 Cans, Ash—Rubbish—Garbage.
 Canvas.
 Caps, Steel Cone.
 Cartridge, Trouble Chute.
 Casings, Storage Battery.
 Celluloids for Number Plates.
 Chains, Directory.
 Chairs, Operator's, Wood.
 Chairs, Operator's, Steel.
 Chromac.
 Cleaners, Jack.
 Cleats, Fibre
 Cleats, Wood.
 Clips, Lineman's Test.

1674

Gaskets for Floor Outlets.
 Gaskets, Manhole.
 Globes, Canteen Sign.
 Gloves, Rubber.
 Guards, Lamp.
 Guards, Wood Tree.
 Hambroline.
 Hangers, Marline Aerial Cable.
 Holders, Asbestos Blanket.
 Holders, Blank.
 Holders, Card.
 Holders, Ticket Pad.
 Hooks. For Extinguisher
 Bracket.
 Hooks, Wall
 Houseline, Marline.
 Hydrometers.
 Irons, Battery.
 Kettles, Paraffine.
 Lockers.
 Magazine, Dynamite, Hand.
 Micas, For Cutouts.
 Mirrors, Splicers.
 Moulding, Abrasion.
 Mountings, Booth.
 Mountings, Thermometer.

Connectors, 7-A Line.
 Coppers, Battery.
 Cords.
 Cord, in Bags and on Rolls.
 Covers, Ash Cans.
 Covers, San'i Pail.
 Doors for Battery Cabinets.
 Ferrules.
 Files, Contact.
 Fixtures, Lighting.
 Fixtures, Sign.
 Fixtures, Illuminated Sign.
 Flags, Red Trucking.
 Frames and Fixtures.
 Frames, Advertising.
 Frames, Bronze.
 Frames, Card.
 Frames, Number Plate.
 Frames, Sign.
 Funnels.
 Furniture.

Outlets, Floor
 Padlocks and Chains.
 Pails, Fire and Sand.
 Paint.
 Panels, End for Telephone Booth.
 Pans, Ground
 Paraffine.
 Plates, Number.
 Plugs, Fibre.
 Posts, Binding.
 Racks, Bicycle.
 Racks, Message.
 Racks, Wood.
 Retainers, Message.
 Rope.
 Rubber, Para
 Scrap, Copper.
 Screws, Wood and Machine.
 Seals, Square Cording.
 Seats, For Telephone Booth.
 Sets, Shellac.
 Sets, Stencil.
 Shelves, For Telephone Booth.
 Shelves, Folding.
 Shields for Expansion Bolts.

1675

APPENDIX "B."—*Continued.*

Signs.	Tags, Linen.
Sleeves, Copper Cable.	Tags, Linen Cable.
Sleeves, Copper Connecting.	Tape, Adhesive.
Sleeves, Tinned Copper Slotted.	Tape, Tarred Cable.
Sleeves, Iron Connecting.	Tape, Cotton.
Sleeves, Lead.	Tape, Friction.
Sleeves, Linen.	Tape, Linen.
Sleeves, Paper.	Tape, Linen Measuring.
Sleeves, Tinned Steel.	Tape, Rubber.
Sleeving Cotton.	Tarpaulins.
Solder.	Tents.
Stands, Message Clips.	Terminals, Cable.
Stencils.	Trays, Wood Battery.
Straps, Wire Coil.	Trays, Desk.
Strips, Designation.	Varnish.
Strips, Fanning.	Washers, Black Fibre.
Strips, Flexible Test.	Wedges, Multiplex.
Supports, Meter.	Wedges, Fibre.
Syringes, Battery.	Zincs, Battery.
Tables, Wood and Steel.	

1676

Date Effective, June 1, 1919.

APPENDIX "C."

Standard Percentage Rates for Inspection of Not W. E. Material.

		Standard percentage rate.
Group 1	Bare H. D. Copper Line Wire.....	.25
Group 2	Iron and Steel Wire and Strand.....	.25
Group 3	Insulated Wires and Cable.....	1.
Group 4	Bolts and Clamps.....	2.
Group 5	Other Pole Line Hardware and Construction Material	1.
Group 6	Creosoted Pine Poles and Stubs.....	4.
Group 7	Wood Pins, Brackets and Pole Steps.....	12.
Group 8	Crossarms and Creosoted Wood Conduit.....	4.5
Group 9	Other Timber Products.....	3.
Group 10	Clay Conduit	1.5
Group 11	Insulators and Knobs.....	1.
Group 12	Tools	2.5
Group 13	Apparatus	3.
Group 14	Miscellaneous	1.5

1677

November 25th, 1919.

Effective December 1st, 1919.

Change Appendix "C" to Supplement "A" of the Supplementary Agreement as follows:

Group 6—Creosoted Pine Poles and Stubs.

4% rate to apply to Western Union Teleg. Company and South Western Tel. & Tel. Company only.

New rate of 8% effective on all bills rendered on and after December 1, 1919, to apply to all other Companies.

This increase due to new inspection specifications issued by the A. T. & T. Co.

E. C. ESTEP,
Assistant Contract Sales Manager,
Western Electric Company.

1678

August 1, 1913.

Southwestern Tel. & Tel. Company,
C. A. Gates, General Manager,
Dallas, Texas.

DEAR SIR:

This letter is to outline the conditions under which we (hereinafter referred to as the Electric Company) will purchase poles as required by you (hereinafter referred to as the Telephone Company).

Service.

The Electric Company agrees to purchase and deliver such poles as the Telephone Company may require; it being understood that all shipments will be made direct and that the Telephone Company will maintain such stocks of poles as are necessary.

Remuneration.

For furnishing chestnut poles which are bought in the field, the Electric Company will charge cost to it plus \$.35 per pole to cover salaries and expenses to buyers and inspectors and the expense of the Electric Company's General Pole Department plus 4%.

For furnishing poles other than chestnut, which are ordinarily bought from dealers, the Electric Company will charge cost to it plus 4% for inspection. Cost in this case means the net price that the Electric Company is obligated to pay the suppliers. When the transportation charges are treated by suppliers as part of the net price to the Electric Company, they shall be included in cost as defined in above paragraphs. All other trans-

portation charges will be paid by Telephone Company, or if paid by the Electric Company, charged to the Telephone Company, but without the addition of above mentioned percentage.

Yours truly,

WESTERN ELECTRIC COMPANY,
By R. W. VAN VALKENBURGH.

1680

No. 143.

This Exhibit shows (1) that during the rise of prices incident to the War the Western Electric Company increased its prices of telephone supplies only 52% to the Associated Companies as against 82% to independent companies, and as against an increase by other companies manufacturing telephone supplies of 121%; (2) that the Western Electric Company sells telephone supplies of its own manufacture to independent companies at prices substantially higher than to the Associated Bell Companies; and (3) that the sales of telephone supplies by the Western Electric Company to independent companies are made in a competitive market.

The exhibit consists of eleven pages. The first two pages give a summary of the data contained in the Exhibit and the remaining ten pages detail the data. The first two pages are as follows:

Memorandum.

Increase in Costs of Telephone Supplies, 1914 to 1919.

Attached are five statements dealing with the costs of certain items of telephone supplies in the years 1914 and 1919. The items shown were selected by the Engineering Department of the American Telephone and Telegraph Company to represent a range of important items of equipment and outside plant.

These statements make certain price comparisons which may be summarized as follows:

Increase in Costs for Year 1919 Over 1914.

Western Electric Apparatus:

	Per cent increase.
Prices to Associated Companies (Exhibit A).....	52
Prices to Independent Companies (Exhibit B).....	82

Non-Western Electric Apparatus:

Prices to Associated Companies (Exhibit C).....	121
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1681 *Sales of Western Electric Apparatus Figured at Prices to Independent Companies in Comparison with Prices to Associated Companies.*

Year.	Cost at associated Co. price.	Cost at independent Co. price.	Increase to independent companies.	Per cent increase.	Exhibit.
1914	\$5,275,443	\$6,362,535	\$1,087,091	21	D
1919	7,973,278	10,990,897	3,026,619	38	E

These summaries indicate:

(1) That the Western Electric Company during the rise of costs consequent to the War increased its prices only 52% to the Associated Companies as against 82% to the Independent Companies; and as against an average increase of 121% by other manufacturers of telephone supplies.

(2) That the Western Company sells apparatus of its own manufacture at prices being substantially higher to Independent Companies than to Associated Companies.

If the Western Electric Company had sold its factory output of the items listed at the Independent Company prices instead of the Associated prices it would have increased its return 21% in 1914 and 38% in 1919 (taking 1919 output at 1918 figures).

(3) That the sales at the higher prices to Independent Companies are made in a competitive market which establishes the worth of the goods. The sales of the Western Electric apparatus to Independent Telephone and other non-contract companies amounted in 1914 to \$2,300,000 and in 1918 to over \$3,300,000.

No. 144.

This Exhibit shows the cost of telephone supplies to the Utica Home Telephone Company when said Company was independently owned as compared with the cost of the same kind of supplies to the Utica Home Telephone Company considered as a part of the Bell system and as purchasing its supplies through the Western Electric Company. The Exhibit shows that the cost of central office and sub-station equipment to said Utica Company during the years 1905 to 1912, when purchased from Independent Manufacturing Companies was 18.69% higher than the cost of such equipment when purchased from the Western Electric Company; and that the cost to said Company of lead cable when purchased from independent manufacturing companies during the same period was 8.08% higher than if purchased through the Western Electric Company. The exhibit consists of six pages, pages two (2) and five (5) being as follows:

Utica Home Telephone Company.

Utica, New York.

Actual Cost of Central Office and Substation Equipment Versus Cost of Equivalent Western Electric Items under Licensee Contract.

Year.	Actual cost.	Cost of equivalent Western Electric items under licensee contract.	Actual cost higher by	
			Amount.	Per cent.
1905.....	\$1,759.50	\$1,399.02	\$360.48	25.77
1906.....	8,372.87	6,841.43	1,531.44	22.38
1907.....	2,407.11	2,056.98	350.13	17.02
1908.....	2,330.28	1,971.40	358.88	18.20
1909.....	1,667.41	1,458.89	208.52	14.29
1910.....	1,636.64	1,443.03	193.61	13.42
1911.....	2,201.48	1,972.29	229.19	11.62
1912.....	1,327.03	1,142.22	184.81	16.18
Total.....	\$21,702.32	\$18,285.26	\$3,417.06	18.69

1683 of such equipment when purchased from the Western Electric Company; and that the cost to said Company of lead cable when purchased from independent manufacturing companies during the same period was 8.08% higher than if purchased through the Western Electric Company. The exhibit consists of six pages, pages two (2) and five (5) being as follows:

Utica Home Telephone Company.

Utica, New York.

Actual Cost of Central Office and Substation Equipment Versus Cost of Equivalent Western Electric Items under Licensee Contract.

Year.	Actual cost.	Cost of equivalent Western Electric items under licensee contract.	Actual cost higher by.	
			Amount.	Per cent.
1905.....	\$1,759.50	\$1,399.02	\$360.48	25.77
1906.....	8,372.87	6,841.43	1,531.44	22.38
1907.....	2,407.11	2,056.98	350.13	17.02
1908.....	2,330.28	1,971.40	358.88	18.20
1909.....	1,667.41	1,458.89	208.52	14.29
1910.....	1,636.64	1,443.03	193.61	13.42
1911.....	2,201.48	1,972.29	229.19	11.62
1912.....	1,327.03	1,142.22	184.81	16.18
Total.....	\$21,702.32	\$18,285.26	\$3,417.06	18.69

Utica Home Telephone Company.

Utica, New York.

Actual Cost of Lead Cable Versus Cost of Equivalent Western Electric Items under Licensee Contract.

Year.	Actual cost.	Cost of equivalent Western Electric items under licensee contract.	Actual cost higher by	
			Amount.	Per cent.
1905.....	\$3,193.52	\$3,819.07*	\$625.55*	16.38*
1906.....	3,668.00	4,027.50*	359.50*	8.93*
1907.....	538.00	385.13	152.87	39.69
1908.....	2,680.47	1,895.94	784.53	41.37
1909.....	7,386.44	6,577.29	809.15	12.30
1910.....	4,188.95	3,326.82	862.13	25.91
1911.....	204.65	191.85	12.80	6.67
1912.....	169.00	157.85	11.15	7.06
Total.....	\$22,029.03	\$20,381.45	\$1,647.53	8.08

98,786 feet of Cable included in Study.

*Red in copy.

No. 145.

This Exhibit is a copy of letter dated Feb. 25, 1920, from E. V. Cox, Supply Contract Auditor to C. A. Heiss, Assistant Comptroller, stating that the prices charged by the Western Electric Company for telephone supplies manufactured by it are standard and uniform to all Associated Bell Companies. The first two pages of the Exhibit follow:

Mr. C. A. Heiss, Assistant Comptroller;

DEAR SIR:

Section 3 (a) of the General Supply Contract between the Associated Companies and the Western Electric Company requires that the prices charged by the Western Electric Company for telephonic appliances manufactured by it shall be standard and uniform to all licensees of the American Bell Telephone Company.

A study has been in process to check the operations of this requirement for the 10 years 1910 to 1919, inclusive, and findings can now be made from the reports for ten companies.

1685 In making this study, advantage was taken of the copies (on file at New York) of the replies by Bell System Companies to the Interstate Commerce Commission under Valuation Order 18. This order required the companies to file price data for the maximum purchases of certain classes of items during each half year from 1910 to 1915, inclusive.

Fifty-three of the most important items of apparatus covered by the Valuation Order were selected, thus assuring the impartiality of the study, and the standard prices to the Associated Companies for them (or items superseding them) were obtained for the years 1910 to 1919, inclusive. These items and prices are shown on the attached photostat chart.

For the years 1910-1915 each item for each year was checked against the prices reported in the replies under valuation Order 18. Discrepancies, if any, were traced back for verification to the original paid bills in the files of the telephone company.

For the years 1916-1919 each item for each year was checked directly against the paid bills in the files of the Associated Company or against records developed therefrom. Discrepancies, if any, were traced back to the original bills.

The results of the study were as follows:

Company.	Number of items checked.	Number of errors in pricing.
Southern New England Tel. Co.....	400	0
New York Telephone Company.....	482	0
Bell Tel. Co. of Pennsylvania.....	611	0
Diamond State Tel. Co.....	376	0
Chesapeake and Potomac Tel. Co.....	297	0
Southern Bel. Tel. and Tel. Co.....	560	0
Cumberland Tel. and Tel. Co.....	524	3
Central Union Telephone Company.....	624	4
Mountain States Tel. and Tel. Co.....	825	1
Pacific Tel. and Tel. Co.....	594	1
Total.....	5,293	9

Number of errors per 1,000 items checked..... 1.7

The above percentage of error in pricing is, in my opinion, very low, and in no case was there anything to indicate that the incorrect price was other than a clerical error. The investigation to 1686 date, therefore, indicates that the Western Electric Company has for the last ten years complied with the section of the contract requiring uniform prices to licensees of the American Bell Telephone Company.

Yours truly,

E. V. COX,
Supply Contract Auditor.

1687 PLAINTIFF'S EXHIBITS NOS. 146 TO 162, INCLUSIVE.

W. O. Pennell, Witness.

No. 146.

"Licensee Contract Between American Telephone & Telegraph Company and Southwestern Telegraph & Telephone Company (Texas) Up to February 10, 1920."

This exhibit consists of 112 pages of type-written matter, being copies of the original Licensee Contract entered into between The American Telephone & Telegraph Company and The Southwestern Telegraph & Telephone Company, together with all letters and memoranda supplementing the original agreement, the last letter being dated December 19, 1917.

On pages 48 to 53 inclusive are copies of letters issued by the American Bell Telephone Company between the dates of June 30, 1885 and July 1, 1887, outlining the terms under which the Licensee companies could then obtain instruments from the American Company. This was prior to the organization of The South-

western Telegraph & Telephone Company. At this time a company, known as the Erie Company operated in the State of Texas.

On pages 1 to 45 inclusive is a copy of the original agreement entered into on July 27, 1889 between the American Bell Telephone Company and The Southwestern Telegraph & Telephone Company, which latter company took over the operation of the Bell properties in Texas in 1889. By virtue of this contract the American Company acquired 30% of the stock of The Southwestern Company. The contract provided that the Southwestern Company should pay the American Company for the use of such Telephone instruments as were furnished by the American Company. Payment 1688 was to be made in accordance with the class of subscribers by whom the Telephone instruments were used as follows:

Form 109-D—Contract for Exchanges, shown on pages 8 to 21 inclusive of the exhibit.

Form 113-D—Contract for Extra-territorial connecting lines, shown on pages 22 to 34 inclusive of the exhibit.

Form 116-C—Contract for Private Lines and Other Purposes, shown on pages 35 to 45 inclusive of the Exhibit.

Inasmuch as most of the instruments were used in exchanges, attention is called to pages 13 and 14 of the exhibit outlining the method of payment for such instruments which was figured as follows:

Rental for transmitter for year.....	\$10.00
Rental of Receiver (called magneto telephone) per year..	10.00
Total per year	<u>\$20.00</u>

The Southwestern Company paid The American Company 70% of \$20.00 or a total per set per year of \$14.00.

On pages 54 to 71 of the exhibit are copies of letters outlining new terms of payment, being reductions made in 1894 and 1895 in the payment. Under the terms then put into effect, the payment was made dependent upon the rates paid by the telephone subscribers. At this time the American Company owned 30% of the stock of the Southwestern Company.

On pages 72 to 78 of the exhibit are copies of letters, outlining a further reduction in the payment made effective in 1898. At this time the American Company owned 30% of the stock of the Southwestern Company.

On pages 79 to 103 of the exhibit and on pages 46 to 47 are copies of letters and agreements covering the method of payment put into effect January 1, 1902, according to which the payment was figured as 4½% of certain gross revenues. This method brought about another reduction in the amount paid by the Southwestern Company to the American Company. The following quotation from page 99 shows what revenues are considered in determining the payment: "The Total gross earnings, for the purpose of determining the

amount of which you pay us $4\frac{1}{2}\%$, shall comprise the accounts described and defined in our Accounting Circular #8 as follows:

- Account 500—Subscribers' Station Revenues.
- Account 501—Public Pay Station Revenues.
- Account 504—Private Exchange Lines.
- Account 510—Message Tolls.

From the total of the foregoing shall be deducted

Account 304—Uncollectible Operating Revenues."

On pages 104 to 109 are copies of letters covering the agreement on the part of the American Company to furnish the Southwestern Company vacuum tube repeaters without specific charge therefor in addition to the regular $4\frac{1}{2}\%$ payment.

The following is an exact copy of this exhibit:

1690 This agreement made this twenty-seventh day of July 1889 by and between the American Bell Telephone Company, a corporation created under the laws of the Commonwealth of Massachusetts of the first part, and The Southwestern Telegraph and Telephone Company, a corporation created under the laws of the State of New York, of the second part. Witnesseth:

Whereas the second party has certain license contracts issued by said The American Bell Telephone Company (a schedule of which contracts is hereto annexed marked "A") and

Whereas said second party desires to surrender said several license contracts and to have certain other license contracts as hereinafter set forth, and the first party has agreed to accept such surrender and to enter into such other license contracts as hereinafter set forth.

Now, therefore, it is agreed as follows, that is to say:

1. Conditional upon said second party owning and controlling all and singular any plants, properties, franchises and rights of every name and nature built, acquired or used, under or by virtue of or for any use in conducting any business done or to be done under said license contracts so to be surrendered, or any of them, and standing in the name of said second party or any other name, or operated by said second party or by other parties, and all income and revenues therefrom and thereunder, and

Conditional upon said second party forthwith surrendering and giving up to said first party said several license contracts named in schedule A, and all and singular the rights of it, said second party, or of other parties in, to and under the same.

1691 2. Said first party agrees that it will accept such surrender and that it will thereupon enter into the following described agreements with said second party, that is to say:

(a) license contract for exchange purposes—Form 109-D, hereto annexed marked "B,"

(b) license contract for extra-territorial connecting lines, Form 113-D, hereto annexed marked "C,"

(c) license contract for the supply of telephones for private lines and other purposes, Form 116-C, hereto annexed marked "D."

But said second party shall assume and perform any and all contracts with subscribers made under said license contracts or any or either of them so to be surrendered and existing at the time of such surrender and shall hold all telephones furnished thereunder by said The American Bell Telephone Company (schedules of which said telephones are hereto annexed marked "E"), as the property of said The American Bell Telephone Company and each under the license contract for like purposes as that under which it was originally furnished, so to be made with it said second party and with like effect as if actually furnished thereunder, except that rental and royalty thereon shall begin at the date of such new license contracts.

3. Whereas it has been and is agreed that said first party in consideration of the premises shall be entitled to and have thirty hundredths (30-100) interest in all and singular the property, rights, business and property of said second party, as the same stood on July 1, 1889, to be paid as hereinafter specified, and that such interest shall not be required to contribute to the expense of developing the territory of said second party nor to the payment of liabilities incurred on account thereof before the first day of June 1891.

Now therefore, for the accomplishment of said purpose and in consideration of the premises, the second party shall forthwith upon the execution of said license contracts furnish and pay to said 1692 The American Bell Telephone Company thirty hundredths (30-100) of its capital stock as the same shall stand fixed at the date of such payment, all such stock to be lawfully issued, full paid and not subject to any assessment or contribution.

4. Said The American Bell Telephone Company agrees that it will release to said second party from time to time its claim as holder of such stock to dividends which may be declared thereon before the first day of June 1891 of net earnings actually received before that date.

In computing net earnings out of which dividends may be declared before said first day of June 1891 there shall be deducted besides all sums necessary for the current expenses of the business, all sums necessary for the maintenance and extension of said second party's lines, instruments, plant and business in the best condition, which sums shall not at any time become the subject of dividends, but this stipulation and such release shall not impair or affect in any manner any other of the rights of said The American Bell Telephone Company as a stockholder, and on said first day of June 1891, the second party shall be free from debt or liability without said The American Bell Telephone Company contributing in any manner to the payment thereof.

5. From time to time, if and whenever a further issue shall be made, whether or — the present authorized capital of it, said second party, or of any increase thereof, except as provided in Article 11, the first party shall have the right and option to call for and take an amount of such stock proportionate to that which may have been subscribed for, taken by or issued to other stockholders or others, in the ratio of its then holdings to the holdings of other stockholders before such increase or issue and upon the same terms and at the same prices.

6. Said second party shall not borrow money for extension of its business nor for any other purpose without the consent of said The American Bell Telephone Company.

7. Said second party shall assume and pay any and all taxes, whether municipal, county, state or other, on or on account 1693 of or by reason of the instrument leased or business done under said license contracts to whomsoever assessed, but this stipulation shall not be held to include the tax assessed by the State of Massachusetts on the corporate franchise of said The American Bell Telephone Company.

8. Said second party shall keep books and accounts of its business according to forms furnished by said The American Bell Telephone Company, which books and accounts shall be open to inspection at all reasonable times by any authorized agent of said company, and shall make reports to it embodying such information as and in such form as it may from time to time desire.

9. Said The American Bell Telephone Company shall have two representatives on the Board of Directors and one representative on the Executive Committee of said second party.

10. Touching certain telephones on which the second party during a certain period paid the first party royalty, but during such period received no compensation for their use by certain subscribers at certain exchanges, respecting which the second party has, from time to time, presented to the first party certain claims, the first party will, if this agreement be ratified as herein provided, allow the second party a rebate on such royalty to an amount not exceeding fifteen thousand dollars, which amount shall be a full and final settlement of all such claims.

11. The first party consents that the exchange sub-licenses made by the second party (a schedule of which is hereto annexed marked "F") may continue in force until their expiration or earlier termination, on condition that each of such sub-licenses shall, before December 31, 1889, be in such form and so executed as the first party shall approve, and that a certified copy of each shall be furnished to the first party before said date; but the second party agrees to acquire and own at or before the expiration of each of such sub-licenses, all and singular the property, plant, rights and business owned or

1694 operated thereunder, without the first party contributing in any manner to the payment thereof, but if they or either of them shall be acquired by increase or issue of capital stock above two million (\$2,000,000) dollars, the second party shall furnish and pay to the first party an amount of such stock equal to thirty seventieths (30-70) of such increase or issue, lawfully issued, full paid and not subject to any assessment or contribution.

12. The second party shall submit this agreement to its stockholders for ratification at a meeting to be duly called and held on or before September 7, 1889, and if such ratification shall not be procured at such meeting and a properly certified transcript of the records of such meeting delivered to the first party within five days following the date of such meeting and all acts and things necessary to qualify the second party to claim in full the benefits of this agreement done on or before September 30, 1889, in a manner satisfactory to the first party, then at the election of the first party, made at any time after said date, this agreement shall be void.

In witness whereof the parties hereto have caused their respective corporate seals to be hereto affixed and these presents to be signed in duplicate in their names and behalf by their respective officers thereto duly authorized.

THE AMERICAN BELL TELEPHONE
COMPANY,

(Sd.)

C. J. F.

(Sd.)

By W. H. FORBES,

[SEAL.]

Member of the Executive Committee.

THE SOUTHWESTERN TELEGRAPH
AND TELEPHONE CO.,

(Sd.)

By LEVI SPRAGUE,

President.

(Sd.)

CHAS. J. GLIDDEN,

[SEAL.]

Secy.

1695

Form 109-D.

Contract for Exchanges.

This agreement, made this Twenty Seventh day of July A. D. 1889, by and between the American Bell Telephone Company, a corporation created under the laws of the State of Massachusetts, Lessor and Licensor, party of the first part, and The Southwestern Telegraph and Telephone Company, a corporation created under the laws of the State of New York, Lessee and Licensee, party of the second part, Witnesseth:

(1) Whereas, the Lessor owns the Letters Patent of the United States granted to Alexander Graham Bell, March 7, 1876, and January, 30, 1877, numbered 174,465, 186,787 respectively, and owns or has the right to use, and may hereafter own or have the right to use, sundry other inventions, which are or may be embodied in elec-

tric speaking telephones, and desires to extend the use of telephones licensed by it in every manner in which the public may wish to use the same, and for that purpose to provide for the construction and use of the apparatus and lines necessary to be used in connection therewith; and whereas the Lessee desires to obtain the use of telephones under lease and license from the party of the first part to be used with the lines of telephonic district or exchanges systems established and owned by it in the territory hereinafter described under the provisions hereinafter set forth; now it is agreed as follows:

(2) The rights hereby granted shall be perpetual unless determined as hereinafter provided, and shall extend to all Exchanges established and owned by the Licensee, and wholly within the following described territory, namely: The States of Arkansas and Texas.

(3) For the purpose of this contract on "Exchange," or "a district or exchange system" means a system in which different stations on the same or different circuits, and either within any city or town, or within a radius of fifteen miles of a central office, are 1696 connected with such central office or branch offices, for the purpose of placing subscribers or other parties by such circuits in communication with such central or branch offices, or with each other, either directly or through the agents of the system. No office or line of an Exchange can be connected with any point outside of its territory, nor with any telegraph company's office or line, except by lines of the Licensor or parties specially designated by it for this purpose, nor, except in connection with such lines, can the lines of an Exchange be used for performing any part of the work of transmitting messages by telephone to points outside its territory, and no telegraph company, unless specially permitted by the Licensor, can be a subscriber or use the system to collect and deliver messages from and to its customers, nor shall any person use the same telephone in connection with different exchange systems.

(4) The Licensor, at its general office or factory, will deliver to the second party, as needed, electric speaking telephones, made and to be used under its patents, during the existence of the rights hereby granted and as herein set forth and permitted, and all telephones delivered to the second party during the continuance hereof shall be deemed to be furnished hereunder, unless otherwise specially designated by the Licensor. They will be of such character and pattern and bear such marks as the Lessor shall from time to time determine, but the second party may choose from among such standard patterns. Each of said telephones shall remain the property of the Licensor, and is hereby leased, and the use of it licensed under said patents and all others under which the Lessor has or may have a right to license, so far as applicable thereto, for the purposes herein declared for the term of one year from the day when rent and royalty begin to accrue on it as provided in Article 8, but the due payment thereof to the Licensor, and the due performance of the stipulations hereof during said year, by the second party and those

using the telephone under it, shall ipso facto operate to renew the lease and license for another year, and so on until the expiration or other determination hereof; the second party is hereby licensed to use said telephones for any purpose, upon circuits exclusively composed of the lines of any such exchange system, and to use them in connection with the trunk lines reserved to the licensor by Article 9, for the purposes and to the extent therein limited, during the term hereby created, upon condition and so long as the rental therefor shall be duly paid to the Licensor and as the provisions hereof are not violated, but not longer or otherwise; and it may grant said right to its customers by contracts as provided in Article 7.

The Lessor will not license any telephones to be used by others upon an exchange system within said territory while the rights of the second party hereunder exist, except telephone to be used on the lines of Exchanges having their central offices outside said territory by persons within said territory who are or may be subscribers to or customers of such Exchanges; but the second party shall, by general or special exchanges, supply (so far as it is authorized so to do by this contract) all reasonable demands of the public, and shall be diligent to increase the number of telephones used on its exchanges. All rights not hereby specifically granted remain to the Licensor.

(5) The Lessor will license to be used with such telephones, the inventions in call-bells, switches, switch-boards, and other apparatus needed for such telephone lines, which it can so license, upon such royalties as it may from time to time establish, not greater than those fixed for others under similar circumstances; but such call-bells, switches, switch-boards and other apparatus shall be used only with telephones licensed by the Lessor, and the second party agrees not to use them otherwise nor to dispose of them to any one except those so licensed, or to the licensed manufacturers of the Lessor. The second party may enjoy any rights of way and similar franchises to maintain said lines which the Lessor can permit it to use, when and so long as, in the judgment of the Lessor, it shall not interfere with the Lessor's enjoyment thereof, and shall pay whatever may be due to third persons, if anything, growing out of or in connection with such use by it.

For trunk lines from the several exchange offices to points outside of the respective exchange District and to telegraph offices, the Lessor may, without further compensation, enjoy all rights of the Licensee to erect and maintain lines, and may use its poles and fixtures, but shall pay a pro rata share of the cost of erecting and maintaining them.

(6) The Lessee admits the validity of all patents relating to telephony and telephonic appliances now or hereafter held by the Licensor or under which it may hold licenses exclusive in their character, and the validity of its title thereto, and will not dispute the same, nor make, use, or be interested in any telephones or telephonic lines or business not licensed by the Licensor or its assigns.

(7) The contract between the second party and these who are to use telephones under it, as herein provided, shall express in such form as the Lessor shall from time to time approve, that the telephone is the property of the Licensor; that it is leased and licensed by it only as herein expressed; that all use of it otherwise is an injury to and invasion of the rights of the Licensor as owner thereof and of the patent rights used therein and thereby, entitling it to all the remedies herein provided and to an injunction, and other legal redress, in a suit by it in its name and behalf. The second party shall require every person using said telephones for communications or messages sent or to be sent over other telephone or telegraph lines, to provide for payment of tolls thereon, and to make every such message subject to such stipulations, regulations, and conditions respecting the liability of such lines for errors and mistakes as the Licensor may from time to time require, and for that purpose will incorporate into its subscription contracts and 1699 message blanks such provisions and contracts, to be agreed to by the subscriber and customer, as the Licensor may from time to time approve, and will hold the Lessor harmless from all loss and expense consequent upon its failure so to do.

(8) The second party shall charge subscribers to its Exchanges such rental and royalty for the telephones as the Licensor may fix from time to time, for these and other like exchanges, and also in addition a sum not exorbitant nor unusual for the use of call-bells, batteries, wires, and other appliances, and for services furnished or performed, and may collect both of said sums for a period not exceeding one year in advance. It will make such reports, giving such information regarding the operations of its Exchanges and the prices charged as the Licensor may from time to time request. It shall pay to the Licensor a rental and royalty at the rate per instrument of Seventy (70) per cent, of the telephone rental and royalty fixed as above (being a discount of Thirty (30) per cent) to commence on each telephone on the first day of the second calendar month after its shipment by the Licensor, to continue until the instrument shall be put into the possession of the Licensor, or proved to be destroyed, and to be paid in equal monthly payments in advance, at the Licensor's office, on the tenth day of each month up to the last day of the same month. Until otherwise fixed, the rates shall be as follows:

Battery transmitter, each instrument per year.....	\$10.00
Magneto-telephone, each instrument " "	\$10.00

Upon each instrument unlawfully detained from the Lessor, the second party shall pay ten dollars per month until satisfactory proof of its destruction be furnished; shall pay five dollars for each lost or destroyed otherwise than by fire or inevitable accident, and shall pay the expenses of ordinary repairs; but said payments shall not confer any right to the instrument, nor to its use, nor satisfy any other breach of covenant, nor impair the right of the Licensor to obtain possession of any instrument or lines.

(9) The Licensor may enter the offices and connect with the exchange systems of the second party any lines to points without the territories of such Exchanges respectively, and to telegraph offices, in order to establish communication between customers of the Exchanges and telegraph companies or parties reached by said lines, and may there operate said lines with suitable appliances; the second party will permit and encourage its customers to use such lines, and by its own operators will receive and transmit such messages to and from its customers and subscribers, or make the proper switch-board or other connections for direct communication, as may be requested, and in such manner, not inconsistent with the proper conduct of its office, as the Licensor shall direct. But if the Licensor is not satisfied with the manner in which it is performed, it may establish its own offices and trunk and radiating lines for this purpose. The second party will not, without special leave of the licensor, so far as it can lawfully prevent it, permit the transmission over such connecting lines of general business messages, market quotations, or news for sale or publication, nor any communications in behalf of other parties than those who directly communicate by the telephone by themselves or their servants or agents personally present at the instruments, and no person engaged in the business of transmitting messages for other parties shall be authorized or knowingly allowed by the second party to transmit such messages over such lines. The second party will cause each of its Exchanges to turn over and deliver to the Licensor and such parties as it may from time to time appoint, exclusively, all messages for electrical transmission to points outside the territory of such Exchange collected by or coming on the wires or within the control of the Exchange, where the Licensor or such party has wires and will transmit the same so far as the second party can lawfully control the same, and unless otherwise specially directed by its customers; but will not solicit such special directions, nor receive and pay tolls for transmission over other lines, unless compellable by law so to do. It shall keep and furnish an account of each such message transmitted or received, and of connections made therefore, and shall collect and on demand pay over to the Licensor or its 1701 said appointees, respectively, the tolls for transmission beyond the exchange system, according to such rates and rules as each shall establish, and shall exhibit its accounts and the tickets from which they are made, so far as may be proper to verify the same. Each Exchange shall, if and when so requested by the licensor, make proper switch-board or other connection between the lines of the Licensor or its Licensees from points without its exchange district and terminating in such exchange office, for the purpose thereby of making up a through line between points without such exchange district. In respect of all the business provided for by this section, the second party shall make no charge to its own subscriber or customer, but shall make the following charges and none others: the second party shall receive upon communications originating within an Exchange and passing over the lines of the Exchange and the extra-territorial lines by direct connection, fifteen

per cent of the gross tolls on the extra-territorial line not to exceed five cents for any one message or communication occupying not more than five minutes; in case an Exchange shall be required to make a switch-board connection for the purpose of making up a through line between points without its exchange district, then the Exchange shall receive as compensation for making such connection, such share of the through toll (terminal expenses being first deducted) as may be agreed upon, not however a greater share thereof than ten miles is of the whole length of the through lines so made up, and not in any event to exceed five cents for any one communication occupying not more than five minutes; upon messages collected by an Exchange over its lines or otherwise and forwarded by telegraph, the Exchange shall receive fifty per cent of the commission paid to the Lessor by the telegraph company, and the whole of the compensation for messenger service paid by the telegraph company; for delivering telegraph messages by telephone to subscribers, and Exchange may have free use of the Lessor's line to the telegraph office, when such use does not interfere with the proper despatch of outgoing business, and may receive from the telegraph company the whole of such compensation as it and the telegraph company may agree upon; for messages delivered by messenger for the telegraph company, it may receive the whole compensation. The Licensor now appoints the Western Union Telegraph Company to perform all telegraphic transmission under this article.

(10) If the second party shall fail to pay any sums due hereunder for thirty days after the same shall become payable, or shall violate any other terms or conditions of this contract, or of a contract preliminary hereto between the same parties dated July 27th, 1889, and shall persist in such default, violation, or neglect, or fail to remedy or repair the same for sixty days after written notice thereof from the Licensor, or shall become bankrupt or insolvent, the Licensor may, if it shall so elect, by written notice to the second party (or those in charge of any of its offices), terminate all rights granted by the Licensor hereunder, and thereupon may by its agents sever the circuit on which any telephone is placed, and take possession of and remove the telephone, and for that purpose may enter the premises of the second party and all persons claiming under it; or it may collect, from any sub-lessee or subscriber, all sums then or thereafter due to it or to the second party for the use of any instruments, circuits, and appliances, or under any subscription contract; or it may, so long as it shall see fit, leave in the enjoyment and use of the telephones any subscriber or other person in actual possession, and collect from him such sums as may then and thereafter be or become due for the use of the telephone and exchange lines, appliances, and services, and for that purpose shall be entitled to and may take possession of all the lines, fixtures, apparatus, appliances, and premises of the second party used for carrying on its business, and occupy and operate the same in connection with said telephones and those of additional customers as exchange system,

or connect such lines with offices of its own for that purpose;
1703 the Licensor shall have the like right upon and within three months after the termination of the rights of the second party hereunder by efflux of time or otherwise; and may enforce these provisions by an entry, without being deemed guilty of any trespass, or by legal process, including an injunction to prevent any interference with the Licensor (and others permitted by it) in the use of said telephones, lines, switch-boards, and appliances. The property as taken, and which does not belong to the Lessor or revert to it hereunder, may be returned within three months from the taking, in which case it shall pay to the second party a reasonable compensation for its use, or the Lessor may retain the same as its own property and shall pay therefor a reasonable price (not exceeding the actual cost) within four months after the taking, and shall account to the second party for all sums collected, which accrued before the Licensor became so entitled to possession, deducting all expenses incident thereto and all that may be due it. The Lessor also reserves all its right and remedies in law and in equity, under the patent laws or otherwise, including the remedy by injunction against the second party or those claiming under it, for the use of any of its patented inventions or instruments not justified by a subsisting license hereunder, or for the violation of any other of its rights. These rights and remedies of the Lessor shall, in case of any default, if the Lessor shall so elect, apply only to the Exchange or Exchanges in which such default has occurred. The Lessor may also use the name of the second party to protect its interests and to enforce its rights hereunder, and the second party shall execute assignments in accordance herewith.

(11) This contract is personal to the second party herein named, and any assignment or attempt to assign it, or the rights granted or lines established hereunder or any or either of them, by act of the party or operation of law, without the written consent of the Licensor, will be violation hereof, and a good ground for a cancellation hereof by the Licensor; The party of the second part promises that it will keep and observe all the stipulations herein contained on its part to be kept and performed. Whenever the Licensor
1704 grants to others the rights for connecting lines or any other rights remaining to it, the stipulations hereof relating hereto shall be binding upon and enure to the benefit of such grantees, and the Licensor shall not be responsible for their acts or defaults. If the Licensor shall transfer to any party who shall agree to perform the stipulations hereof its title to the telephones hereby leased and the patent rights under which they are licensed, and its then existing interests hereunder, it is agreed that the provisions hereof enure to the benefit of and are binding upon such party in respect of all things done or to be done after such assignment, as if it were named a party hereto, and this said American Bell Telephone Company shall no longer be responsible hereunder.

The Licensee also agrees that it will not allow any telegraph company to use or to have any rights, or poles or other structures leased

or put up by or belonging to or under the control of said Licensee without the written assent of the said American Bell Telephone Company.

Touching the lines which the first party may desire and direct to be built connecting the Exchanges of the second party with the Telegraph Offices of the Company or Companies which the first party may appoint to receive the telegraph messages to be turned over by said second party.

Whereas the first party has at the request of the second party in consideration of its undertaking hereinafter in this paragraph contained consented to increase the part to be paid the Exchange of the commission paid the first party by the Telegraph Company upon messages turned over from Twenty-five (25) per cent to Fifty (50) per cent thereof:

Now the second party in consideration thereof agrees that it will at its own cost and without charge or expense to said first party build, equip and maintain such lines and furnish all instruments necessary to be used for the operation thereof, except telephones to be used in the telegraph office, but that such lines when 1705 built shall become and remain the property of said first party.

Discount on telephones as given in surrendered contract (as per Exhibit A) to continue until June 1st, 1891.

*The following erasures viz: eight (8) words on line 22, two (2) letters two (2) figures and one (1) word on line 23, ten (10) words and one (1) figure on line 56, one (1) word on line 170, four (4) words on line 217, all the words on lines 218 and 219, and six (6) words on line 220, and the following interlineations viz: "fifty" on line 170 and "or of a contract preliminary hereto between the same parties dated July 27th 1889" on line 179, were made before signature by either party.

Signed in duplicate on the day first above written.

[Seal A. B. T. Co.]

THE AMERICAN BELL TELEPHONE CO.,

(Sd.) By JOHN E. HUDSON,

(Sd.) C. J. F.,
President.

[Seal Sowsstn. Co.]

THE SOUTHWESTERN TELEGRAPH
AND TELEPHONE CO.,

(Sd.) By LEVI SPRAGUE,

Prest.
(Sd.) CHAS J. GLIDDEN,
Secy.

*This paragraph refers to interlineations in the printed form on which the original agreement was made.

Form 113 D.

Contract for Extraterritorial Connecting Lines.

This agreement, made this Twenty Seventh day of July, A. D. 1889, by and between the American Bell Telephone Company, a corporation duly formed under the laws of Massachusetts, Lessor and Licensor, of the first part, and the Southwestern Telegraph and Telephone Company, a corporation created under the laws of the State of New York, Lessee and Licensee, of the second part, witnesseth:

1. Said Licensee desires to obtain the right to use upon lines between telephonic exchange districts established or which may be established in the following described territory, viz:


The State- of Arkansas and Texas, telephones to be obtained from the Lessor and under lease- and license from it, under its two patents granted Alexander Graham Bell, No. 174,465, dated 1706 March 7, 1876, and 186,787, dated January 30, 1877, and under other patents which it may hereafter own or have the right to use, applicable thereto; and also to avail itself of and enjoy the right of connecting with the exchange systems established within said territory, as provided and stipulated in favor of the Lessor in its exchange contracts for these systems, (copies of which stipulations have been furnished to the Licensee, and the terms of which he is to conform to so far as they relate to business to be done hereunder) and of connecting with exchange systems which may hereafter be established in exchange districts in said territory, under contracts to be made by the Lessor therefor, to contain stipulations substantially like those in the Lessor's Standard Form 109 C, a copy of which has been furnished to the Lessee, and wishes to use, and allow others to use, said lines for personal communication between persons in different exchange districts in said territory; now it is agreed:

(2) Said second party shall by the establishment of such lines, so far as it is authorized so to do by this contract, satisfy all reasonable demands of the public therefor, and shall be diligent to increase the number of its said lines.

The rights hereby granted to the Lessee shall be perpetual unless determined as hereinafter provided:

3. The Lessee may construct lines between exchanges in said territory, and may use such lines for telephonic personal communication between a customer in one such exchange district and a customer in another such exchange district, and not otherwise, except in connection with lines mentioned in Article 6 hereof owned or specially licensed by the Lessor, and by it designated for that purpose, and then only as and for the purposes expressed in said Article 6. The Lessee shall not directly or indirectly connect its lines with any telephone or telegraph line or telephone exchange, except lines

with which it has been by the Lessor specially authorized to connect; nor deliver messages to be forwarded to designation by telegraph to any telegraph company, except such as may be specially designated by the Lessor for that purpose, so far as it can lawfully control the same, or unless specially directed by a customer so to do (but it will not solicit such special direction nor receive and pay tolls over other lines unless compellable by law so to do). For the purpose of establishing telephonic personal communication between customers as aforesaid, the Lessee may have and exercise all the right to construct and operate telephone lines in said districts, and there maintain suitable offices and connect with exchange systems established or to be established, as aforesaid, which the Lessor has reserved and is or may be entitled to grant for extra-territorial connecting lines under licenses to exchanges made or to be made as aforesaid; but the Lessee shall connect with each local exchange and do its business so far as the same can, in the opinion of the Lessor, conveniently be so done, with the customers thereof through said exchange, unless the American Bell Telephone Company, or its successors, shall decide that the exchange fails to furnish proper facilities, for the purpose of this contract an exchange district means a territory, not to cover more than a single town or city, or a circle of fifteen miles radius measured from a central point, which the Licen or has included and covered or may hereafter include and cover in and by an exchange license.

4. The Licensor, at its general office or factory, will deliver to the Lessee, as called for, electric speaking telephones, made and to be used under its patents during the existence of the rights hereby granted and as herein set forth and permitted, and all telephones delivered to the Lessee during the continuance hereof shall be deemed to be furnished hereunder, unless otherwise specially designated by the Licensor. They will be of such character and pattern and bear such marks as the Lessor shall from time to time determine, but the Lessee may choose from among such standard patterns. Each of said telephones shall remain the property of the Licensor, and is hereby leased, and the use of it is hereby licensed for the purposes herein declared for the term of one year from the day when rent and royalty begins to accrue on it, as herein provided; 1708 but the due payment thereof to the Licensor, and the due performance of the stipulations hereof during said year by the Lessee and those using the telephone under it, shall ipso facto operate to renew the lease and license for another year, and so on until the determination hereof. The licensee shall pay to the Licensor seventy (70) per cent of the telephone rental and royalty which shall be fixed from time to time by the Licensor (being a discount of Thirty (30) per cent), to commence on each instrument on the first day of the second calendar month after its shipment by the Licensor, to continue until the instrument shall be put into the possession of the Licensor, or proved to be destroyed, and to be paid in equal monthly payments in advance at the Licensor's office, on the tenth day of each month up to the last day of the same month. Until otherwise fixed, the rates shall be as follows: 

Battery transmitter, each instrument per year.....	\$10.00
Magneto-telephone, each instrument " "	\$10.00

Upon each instrument unlawfully detained from the Lessor, the Lessee shall pay five dollars per month until satisfactory proof of its destruction be furnished, and five dollars for each lost or destroyed otherwise than by fire or inevitable accident, and shall also bear the expense of ordinary repairs; but said payments shall not confer any right to the instrument, nor to its use, nor satisfy any other breach of covenant, nor impair the right of the Licensor to obtain possession of any instrument or lines.

5. The right and license hereby granted is the right and license to use said telephones to carry on personal communication, upon their own business, by and between customers, and their employes personally present at instruments in different exchange districts within the territory above described, over circuits composed exclusively of said authorized lines owned by the Lessee and the lines of the exchange licensed by the Licensor, and with which the Licensee is authorized to connect as aforesaid, and between any such customer and a customer so using the telephone in a place
1709 with which the second party is not hereby authorized to connect, by means of such lines of the Lessee, and other lines and instruments specially licensed by the Licensor therefor; but the telephones furnished hereunder are not to be used to connect parties in the same exchange district, nor for the transmission of general business messages, market quotations, or news for sale or publication, in competition with the business of any telegraph company; and the Lessee, so far as it can lawfully and properly prevent it, will not permit the same to be so used. The term "general business messages" is defined to mean all communications in behalf of other parties than those who directly communicate by the telephone by themselves or their servants or agents personally present at the instruments, and no person engaged in the business of transmitting messages for other parties shall be authorized or knowingly allowed by the Lessee, its servants or agents, to transmit such messages through the telephone. The Lessor will not furnish or license telephones to any other party to establish such personal communication between persons in different exchange districts, both of which are within said territory, while the rights of the Lessee hereunder exist, except so far as the Lessor's existing contracts with the Western Union Telegraph Company, and with others, may require it so to do, or as it may see fit so to do under contracts hereafter to be made for private, club, social, and other lines substantially as defined in its Standard Form No. 116 B, but the Lessee shall furnish sufficient general lines for general customers, and special lines for individual or associated customers, between exchange districts throughout said territory, and for the purposes aforesaid, at prices which shall be reasonable under the circumstances hereunder.

6. The Lessor will license to be used with such telephones the inventions in call bells, switches, switch-board, and other apparatus needed for such telephone lines, which it can so license, upon such

royalties as it may from time to time establish, not greater
1710 than these fixed for others under similar circumstances, but
such call bells, switches, switch-boards, and other apparatus
shall be used only with telephones licensed by the Lessor, and the
Lessee agrees not to use them otherwise, nor to dispose of them to
any one except to those so licensed, or to the licensed manufacturers
of the Lessor. The Licensee may enjoy any rights of way and
similar franchises to maintain said lines which the Lessor can permit
him to use, when and so long as, in the judgment of the Lessor, it
shall not interfere with the enjoyment thereof by the Lessor or its
other grantees, and shall pay whatever may be due to third persons,
if anything, growing out of or in connection with such use by it.
The Lessor reserves the right to use telephones on lines passing over
the routes or any or either of them of the lines hereby licensed, and
connecting, with each other or with said exchanges, places with
which the Lessee is not hereby authorized to connect, for the purpose
of establishing personal communication or transmitting messages
between such places and between such places and said exchanges,
and, to establish lines for that purpose, may enjoy any rights of the
Lessee to erect and maintain lines, and may string its wires on the
poles of the Lessee, paying therefor a pole rental of \$4.00 per mile
per annum for each wire. The Lessee will also allow the Lessor to
connect the wires of any such lines with its said lines in order to
constitute thereby a through line, of which the Lessee's lines or any
or either of them or any part of either of them can form a portion
or link, in order to forward through messages, will make or permit
to be made convenient switchboard or other connections for that
purpose, and as compensation therefor will take a share of the
through toll (terminal expenses being first deducted) pro rata ac-
cording to distance, not greater than that customarily charged by
it for like distance, and will also allow any telephone exchange to
be designated by the Lessor to connect with its lines for the purpose
and substantially in the manner described in said Standard Form
109 C. In respect of all communications originating on its lines
and which are to be forwarded over any other lines, the Lessee
1711 shall require the customer or subscriber to bind himself by
and make every message subject to such contracts, stipula-
tions and limitations of liability of such other lines as the Lessor
may from time to time require, in such form as it may from time
to time prescribe, and will hold the Lessor harmless from all loss
or expense consequent upon its failure so to do.

7. The Lessee admits the validity of all patents relating to tele-
phony and telephonic appliances, now or hereafter held by the
Licensor, or under which it may hold licenses exclusive in their
character and the validity of its title thereto, and will not dispute
the same nor make, use, or be interested in any telephones or tele-
phonic lines or business not licensed by the Licensor or its assigns.

8. The Lessee will pay to the exchanges established, or which may
hereafter be established, and with which it shall connect as aforesaid,
such sums as such exchanges are or shall be entitled to receive under

their exchange contracts, made or to be made, for making connections with extra-territorial lines. And the Lessee will also pay to the Lessor, in addition to said telephone rental and royalty, and in consideration of the further rights and privileges hereby granted, fifteen (15) per cent of the Lessee's gross receipts from subscriptions and tolls (which tolls shall not be less than at the rate of fifteen cents for the first ten miles or fraction thereof and five cents for each additional ten miles or fraction thereof for a communication occupying not more than five minutes), and from other sources, after deducting for terminal expenses such sums as it may have to pay to the terminal exchange not exceeding those chargeable under exchange contracts made or to be made by the Licensor as aforesaid. Said payments are to be made to the Lessor at its office on the tenth day of each month, upon all receipts up to the first day thereof. The Lessee shall keep full accounts of such receipts and payments, furnish copies thereof to the Licensor upon request, and exhibit its original accounts and vouchers so far as may be proper to verify the same.

9. The lines to be built hereunder shall be sufficient and suitable for the purposes contemplated hereby.

1712 10. The Lessee may place the telephones furnished hereunder in its own offices, for use, by general customers, as herein stated and limited, or may place them under subleases and licenses in connection with its lines, on the premises of subscribers or special customers for such use. Such subleases and licenses shall, in such form as the Licensor shall from time to time approve, express the title of the Licensor to the Telephone and the patents, the extent of the license hereby granted, the purposes for which the telephone may be used, that any other use of any telephone by any person, or non-payment of the rental and royalty to the Licensor, is an injury to and invasion of its rights as owner thereof and of the patent rights used therein and thereby, and entitling it to all rights and remedies in law and in equity, under the patent laws and as herein expressed otherwise, including the remedy by injunction against the person in possession thereof, and all others who have misused the same as aforesaid for any use not justified by a subsisting license, or for the violation of any other of its rights. It may also enforce against such sub-licenses all rights and pursue all remedies given by and under such sub-license, and may use the name of the Lessee for such purpose, or may require the Lessee, at his own expense, to enforce the terms of such contract.

11. If the Lessee shall fail to make any of the payments herein stipulated when due, or shall fail to keep any of the terms hereof, or of a contract preliminary hereto between the same parties dated July 27th, 1889, and such default shall continue during a period of sixty days after written notice thereof from the Lessor, or shall become bankrupt or insolvent, the Licensor may, if it shall so elect, by a written notice to the Lessee (or those in charge of any of its principal offices) terminate all rights granted by the Licensor hereunder, and by itself or those designated by it for the purpose, by

due process of law or by actual entry, may and shall be entitled to repossess itself of the rights and privileges herein granted, and thereafter use and enjoy the same; and especially may take possession of and remove said telephones, or sever the wires to which they are connected, and connect its own wires to said severed wires, telephones, and apparatus, and use the same by itself and by
1713 those whom it may permit; or it may, so long as it shall see fit, leave in the enjoyment and use of the telephones any person in actual possession, and collect from him such sums as are or may become due for the use of the telephones, wires and appliances, used therewith, and for that purpose shall be entitled to and may take possession of all the lines, fixtures, apparatus, appliances and premises of the Lessee used for carrying on this business, and occupy and operate the same in connection with said telephones and other telephones connected or to be connected therewith, or connect such lines with offices of its own for that purpose. The Licensor shall have the like right upon or within three months after the termination of the rights of the Licensee hereunder by efflux of time or otherwise; and may enforce this provision by an entry without being deemed guilty of any trespass, or by legal process, including an injunction to prevent any interference with the Licensor and others permitted by it in the use of said telephones, lines and apparatus. The property so taken and which does not belong to the Lessor or revert to it hereunder may be returned within three months from the taking, in which case the Lessor shall pay to the Lessee a reasonable compensation for the use thereof, or the Lessor may retain the same as its own property, and shall pay therefore a reasonable price, in no case exceeding the actual cost, within four months after the taking, and shall account to the Lessee for all sums collected which accrued before the Licensor became so entitled to possession, first deducting all expenses incident thereto, and all that may be due from the Lessee to it. The Lessor also reserves all its rights and remedies in law and in equity under the patent laws or otherwise, including the remedy by injunction against the Lessee or those claiming under it, for the use of any of its patented inventions or instruments not justified by a subsisting license hereunder, or for the violation of any other of its rights. The Lessor may also use the name of the Lessee to protect its interests and enforce its rights hereunder, and the Lessee shall execute assignments in accordance herewith.

1714 12. This contract is personal to the Lessee herein named, and any assignment or attempt to assign the same or the lines established hereunder, or any or either of them, by act of the party or operation of law, without the written consent of the Licensor, shall be violation hereof, and good ground for a cancellation hereof by the Licensor; The party of the second party covenants that he will keep and observe all the stipulations herein contained on his part to be kept and performed. Whenever the Licensor grants to others the rights for exchange or any of its rights under Article 6 hereof or any other rights remaining to it, the stipulations hereof relating

thereto shall be binding upon and enure to the benefit of such grantees, and the Licensor shall not be responsible for their acts or defaults. If the Licensor shall transfer to any party who shall agree to perform the stipulations thereof, its title to the telephones hereby leased, and the patent rights under which they are licensed, and its then existing rights hereunder, it is agreed that the provisions hereof enure to the benefit of and are binding upon such party in respect of all things done or to be done after such assignment, as if it were named a party, and that said American Bell Telephone Company shall no longer be responsible hereunder. Words herein referring to the party of the second party shall be taken to be of such number and gender as may be required.

Discount on telephones and proportion of extra-territorial receipts as given in surrendered contract (as per Exhibit A) to continue until June 1st, 1891.

* The following erasures, viz: six (6) words on line 32, three (3) figures and one (1) word on line 33, four (4) words on line 67, nine (9) words and one (1) figure on line 68, nine (9) words on line 69, two (2) words on line 149, eight (8) words on line 159, all the words on lines 160, 161 and 162, nine (9) words on line 215, all the words on lines 216 and 217, and (1) word on line 218, and all the words on line 229, and the following interlineations, viz: "Seventy (70) per cent of the telephone rental and royalty which shall be fixed from time to time by the Licensor (being a 1715 discount of Thirty (30) per cent)," on line 69, "fifteen (15) per cent" on line 149, "or fraction thereof" and "from other sources" on line 152, and "or of a contract preliminary hereto between the same parties dated July 27th, 1889" on line 181, were made before signature by either party.

Signed on the date first above written in duplicate.

[Seal Am. Bell Tel. Co.]

THE AMERICAN BELL TELEPHONE CO.,

(Sd.) C. J. F.

(Sd.) By JOHN E. HUDSON,

Its President.

[Seal So. Westn. Co.]

THE SOUTHWESTERN TELEGRAPH AND
TELEPHONE CO.,

(Sd.) By LEVI SPRAGUE,

Prest.

(Sd.) CHAS. J. GLIDDEN,

Secy.

*This paragraph refers to interlineations in the printed form on which the original agreement was made.

Form 116-C.

This agreement, by and between the American Bell Telephone Company of Boston, Massachusetts, a corporation established under the laws of said State, Lessor and Licensor, of the first part, and The Southwestern Telegraph and Telephone Company, a corporation created under the laws of the State of New York, of the second part, witnesseth:

1. Whereas, the Lessor owns the patents of the United States granted to Alexander Graham Bell, March 7, 1876, and January 30, 1877, numbered 174, 465 and 186,787, respectively, and owns or has the right to use, and may hereafter own or have the right to use, sundry other inventions, which are or may be embodied in electric speaking telephones, now, for the purpose of supplying and placing telephones to be used for the purposes, and as hereinafter set forth, upon private lines, club lines, social lines, and lines for speaking-tube purposes, which are entirely within the following described territory, viz:

The States of Arkansas and Texas; it is agreed:

2. The private line referred to in this contract is a line consisting of only a single circuit which shall not be permanently nor temporarily connected with any other circuit, and the telephones on which shall be used only for the individual and private business of the Lessees, and only by them and their employees; and which line shall not extend more than twenty-five miles beyond the municipal limits of the city or town in which one end of the line is situated, and which shall not be used for more than four individuals, firms or corporations, and which shall not have more than eight stations, and upon which no business shall be transacted for any consideration or toll to be paid by other persons than the Lessees, or other parties named in the lease of telephones, not exceeding said number, and over which shall be transmitted no business messages, market quotations or news for sale or publication, or messages in respect of which, or of the transmission, collection, delivery, publication, sale or use of which any consideration or toll is to be paid by any other person.

3. A club line is a line consisting of only a single circuit, connecting not less than five individuals, firms or corporations, without regard to the number of stations, or having not less than nine stations, without regard to the number of parties connected, all the stations of which are within the same municipality, or within five miles of its principal post office, and which is used by not more than one party at each station. In other respects, the use is limited as above stated for private lines.

4. A social line is a line consisting of a single circuit only, which shall not be permanently or temporarily connected with any other circuit, all the stations of which are within the same municipality and the telephones on which are to be used only for connecting

persons and families for social and household purposes, and by not more than one party at each station.

But no one of the stations of a private line or of a club line or of a social line shall be used as an exchange office, or be provided with a switch-board or equivalent apparatus to be used in connection with said line, nor can said line be permanently or temporarily connected with a telephone exchange system, or with another circuit, nor with a telegraph office, without special leave of the Lessor. In case any station shall, by such special leave, be located at a telegraph office, customers may be allowed to use the line to receive and transmit their telegraphic messages, so far as may be expressly permitted by a written license which they shall agree to, and which shall conform to the following terms, viz: Each person so using said lines makes and constitutes the operator at the telegraph office his agent, without pay and without liability, to write upon the ordinary message blanks of the telegraph company all messages to be sent, to send them at the rate for unrepeatd messages, to receive and receipt for all messages received for him, and to sign his name to the contracts limiting the liability of such telegraph company set forth on such blanks; and will pay to said telegraph company all tolls on messages so sent, and all tolls on unpaid messages received for him; and he assumes all risk of error or mistake in the reception, repetition, delivery, non-delivery or misdelivery of messages sent or intended to be sent over said telephone line.

5. Speaking-tube telephones are telephones of the kind especially constructed and designated for that purpose, and which are allowed to be used only to connect stations, all of which shall be on the same premises of one individual, firm or corporation, without passing over the land of any other person (except a road or water-course); or they may be allowed to be used for connecting a licensee's house, stable and other domestic or farm buildings by passing over intervening land, provided that all stations connected by a speaking-tube line are to be within one circle of less than half a mile in diameter.

6. If telephones are desired for uses and upon lines other than herein defined, special application must be made to and special leases and licenses obtained therefore from the American Bell Telephone Company; and the provisions hereof shall apply to such other telephones furnished to the second party so far as they can be applied, subject to the provisions of such special licenses. By special leave of the Lessor, one station of a club line or of a private line or of a social line may be maintained in a telegraph office by consent of the telegraph company; but they are only licensed for this purpose so far as and upon the terms and conditions expressed in Article 4 hereof; and when so licensed or used, such station and the business done by and from it shall be under such regulations as the Lessor shall from time to time prescribe; and the party of the second part shall receive twenty-five per cent, and the party of the first part seventy-five per cent of whatever the Western Union Telegraph Company (or any other company specially designated by the Lessor) may pay for the collection and delivery of, and as com-

mission upon the telegraphic messages collected or delivered through such telephone line.

7. The Licensor, at its general office or factory, will from time to time deliver to the second party as needed, but not exclusively, electric speaking telephones, during the existence of this contract, to be used upon such lines for such purposes; they shall be of such standard character and pattern and bear such marks as the Licensor shall from time to time determine, but the second party may select which it prefers among said patterns (except for speaking-tube purposes as aforesaid): the Licensor will also license, to be used with such telephones, the inventions in call-bells, switches and other apparatus needed for such telephone lines, which it can so license, upon such royalties as it may from time to time establish, not greater than those fixed for others under similar circumstances; but such call-bells, switches and other apparatus shall be used only with telephones licensed by the Lessor, and shall not be disposed of to any one except those so licensed or to the licensed manufacturers of the Lessor. Each telephone shall remain the property of the licensor, and may be used by suitable customers to be selected by the second party upon such lines for the purposes herein set forth, under lease and license from the licensor and lessor to such customers such lease and license to be furnished by it for each customer, in such forms and upon such terms, conditions and rental, and for such periods as the Licensor may from time to time determine; each lease 1719 and license to be countersigned by the said second party, and to be signed by each customer upon whose premises telephones are to be placed. Said telephone rentals and royalties shall belong to and may be collected by said American Bell Telephone Company in its own name; non-payment thereof to the said company, or any use of the telephones otherwise than is herein permitted, is an injury to and invasion of its rights as owner of the instrument and of the patent rights used therein and thereby, and entitling it to all rights and remedies in law and in equity, under the patent laws and as expressed herein and in licenses to be granted in pursuance hereof and otherwise, including the remedy by injunction, against the person in possession thereof and all others who have misused the same as aforesaid for the use of any of its patented inventions or instruments not justified by a subsisting license hereunder, or for the violation of any other of its rights.

If the said lines belong to the second party, it may also charge to the customer a sum not exorbitant nor unusual for the use of such lines and the apparatus and appliances other than telephones used therewith. The second party shall, on each pay-day, report the names and locations of each new customer, all licenses issued and all removals of instruments, and give such other information respecting the business as the Licensor may call for, all in such form as it may request, and shall transmit to the Licensor the leases signed by customers as aforesaid. The lessor reserves the right to refuse to furnish telephones to any party who in its opinion is likely to use them in a manner contrary to the provisions hereof, or to the obligations of the Lessor to other parties.

8. The party of the second party shall pay, or cause to be paid, to the Licensor a rental and royalty at the rate per instrument of the following percentages of the telephone rental and royalty fixed by the Licensor in accordance with this contract:

Telephones for private lines Seventy (70) per cent (being a discount of Thirty (30) per cent):

Telephones for club lines Seventy (70) per cent (being a discount of Thirty (30) per cent):

1720 Telephones for social lines Seventy (70) per cent (being a discount of Thirty (30) per cent):

Telephones for speaking-tube lines Seventy (70) per cent (being a discount of Thirty (30) per cent):

to commence on each telephone on the first day of the second calendar months after its shipment by the Licensor, to continue until the instrument shall be put into the possession of the Licensor, or proved to be destroyed, and to be paid in equal monthly payments in advance at the Licensor's office, on the tenth day of each month up to the last day of the same month. Until otherwise fixed the rates shall be as follows:

For private lines:

Battery transmitter, each instrument.....	per year \$10.00
Magneto-telephone, each instrument.....	per year \$10.00

For club lines:

\$10 per year for each battery transmitter, and \$10 per year for each magneto-telephone, where only one instrument is used at a terminal or station; where a pair of instruments, composed of a battery transmitter and a magneto-telephone, are used at one terminal or station, \$15 per year for each pair so used.

For social lines:

Battery transmitter, each instrument.....	per year \$7.50
Magneto-telephone, each instrument.....	per year 7.50

For speaking-tube purposes:

Speaking-tube telephone.....	\$5.00 each for one year
Speaking-tube transmitter.....	\$5.00 each for one year

Upon each telephone unlawfully detained from the Lessor the second party shall pay, or cause to be paid, ten dollars per month, until satisfactory proof of its destruction be furnished, and five dollars for each lost or destroyed otherwise than by fire or unavoidable accident, and the second party shall bear the expense of ordinary repairs; but neither of said payments shall confer any right to the instrument, nor to its use, nor satisfy any other breach of covenant, nor impair the right of the Licensor to obtain possession by act of the

party or legal process. Said second party, so long as it makes, or causes to be made, the payments herein stipulated, and keeps all the terms hereof, and of a contract preliminary hereto between the same parties dated July 27th, 1889, may collect the rentals and royalties from the customers hereunder for a period in advance not exceeding one year. Upon any default on its part which shall continue for more than thirty days after written notice thereof, the Licensor may, by written notice to it or by publication in some newspaper in the City of Austin, Texas, revoke said authority to collect, and revoke and cancel all the right and interest of every kind hereunder of the second party, and may, in its own name, or in the name of the second party if it shall deem such course more convenient, collect all rentals for telephones and lines furnished hereunder or in accordance herewith, whether then due or thereafter to become due, and take possession and remove all telephones furnished hereunder, subject to such rights as such customers may lawfully have under licenses to be granted by it in accordance with the terms hereof. For all rentals and royalties, so collected by the Licensor, and which accrued before the Licensor gave notice as aforesaid, it shall account to the second party, first deducting all that may be due from said second party to it, and expenses incident thereto.

9. In case any customer hereunder shall fail to pay the rental and royalty for the instruments delivered to him or shall use them otherwise than as provided in this license contract, or fail to return them when bound so to do, the American Bell Telephone Company may, if it sees fit, in its own name, or in that of the party of the second part, as it may deem most convenient, have and exercise against said customer all the rights for redress and protection by act of the party or by process of law, which belong to it, as owner of the telephone and of patent rights to the inventions embodied therein or used thereby, or provided hereby or by any contract of such customer; or may require the second party to pursue all said last named contract rights and remedies to final judgment and execution, or other most advantageous process of the court, at his own expense.

10. The second party admits the validity of all patents relating to telephony and telephonic appliances now or hereafter held by the Licensor, or under which it may hold licenses exclusive in their character, and the validity of its title thereto, and will not make, use or be interested in any telephones or telephonic lines or business not licensed by the Licensor or its assigns.

11. The second party shall, without charge, promptly notify the Lessor of any parties using telephones not leased by the second party or the American Bell Telephone Company, giving name of party, description of instrument, and place where same is used, and any other information possible to obtain.

13. The second party covenants that it will be absolutely responsible for the acts and omissions of itself, its agents and servants, and that it will use good diligence and care to select sublicensees of a

proper character, and to compel them to conform to the terms hereof. Whenever the Licensor grants to others any right remaining to it hereunder, the stipulations hereof relating thereto shall be binding upon and enure to the benefit of such grantees, and the Licensor shall not be responsible for their acts of defaults. If the Licensor shall transfer to any party, who shall agree to perform the stipulations hereof, its title to the telephones hereby leased and the patent rights under which they are licensed, and its then existing interests hereunder, it is agreed that the provisions hereof enure to the benefit of, and are binding upon such party in respect of all things done or to be done after such assignment as if it were named a party hereto, and that said American Bell Telephone Company shall no longer be responsible hereunder. All words herein relating to the second party shall be deemed to be of such number and gender as may be required.

14. The rights of the second party hereunder shall be perpetual unless determined as provided in Article 8 hereof.

Discount on telephones as given in surrendered contract (as per exhibit A) to continue until June 1st, 1891.

*All the words on lines 172, 173, 174, 175, 176, 177, 178 and 179 erased, and the words "and of a contract preliminary hereto between the same parties dated July 27th, 1889" on line 142, were made before signature by either party.

1723 Signed in duplicate this Twenty Seventh day of July 1889.

[Seal Am. Bell Tel. Co.]

THE AMERICAN BELL TELEPHONE CO.

(Sd.) C. J. F.,

(Sd.) By JOHN E. HUDSON,
Its President.

[Seal Sowestn. Co.]

THE SOUTHWESTERN TELEGRAPH
AND TELEPHONE CO.,

(Sd.) By LEVI SPRAGUE,
President.

(Sd.) CHAS. J. GLIDDEN,
Secy.

Memorandum of an agreement, made this first day of November, 1907, by and between The American Bell Telephone Company, incorporated under the laws of Massachusetts, of the first part, and The Southwestern Telegraph and Telephone Company, incorporated under the laws of New York, of the second part,

*This paragraph refers to interlineation in the printed form on which the original agreement was made.

Witnesseth:

Whereas, said Companies entered into certain contracts dated July 27, 1889, in Forms 109-D, 113-D and 116-C, respectively, and also a contract preliminary thereto, bearing the same date, under which said The American Bell Telephone Company agreed to lease and license to said The Southwestern Telegraph and Telephone Company telephone instruments and to furnish to said Company certain other services and things, as expressed in said contracts and in certain contracts in Form 113-C, made subsequent to said date, and

Whereas said contracts have in certain respects become obsolete, and it is desired by the parties hereto to cancel the same and to make a new agreement in place thereof,

Now it is agreed:

That all contracts now existing between said Companies in Forms 109-D, 113-C, 113-D and 116-C, respectively, and said preliminary agreement, are hereby cancelled as of this date, but said The American Bell Telephone Company shall continue to furnish said The Southwestern Telegraph and Telephone Company telephone instruments, license their use, and the use of telephone appliances, 1724 so long as this agreement remains in force, under all patents now or hereafter owned or controlled by it, said The American Bell Telephone Company, and furnish other services and things as heretofore, and said The Southwestern Telegraph and Telephone Company shall pay to said The American Bell Telephone Company the same consideration in money which it has heretofore paid under the terms of the letter of said The American Bell Telephone Company, dated November 21, 1902.

Said The Southwestern Telegraph and Telephone Company shall assume and pay any and all taxes, whether municipal, county, state or other, assessed on or on account of or by reason of the telephone instruments furnished hereunder.

Signed on the day first above written, in duplicate.

[SEAL.]

THE SOUTHWESTERN TELEGRAPH
AND TELEPHONE CO.,

(Sd.)

By H. J. PETTENGILL,
President.

[SEAL.]

THE AMERICAN BELL TELEPHONE
COMPANY,

(Sd.)

By THEO. N. VAIL,
President.

Copy.

The American Bell Telephone Company.

No. 95 Milk Street.

P. O. Drawer 2.

Boston, June 30th, 1885.

To our licensees for exchange purposes.

GENTLEMEN:

The American Bell Telephone Company hereby proposes to provide, (either by an adjustment of the commission allowed you on the gross rental for Telephones used by certain Exchange Subscribers, hereinafter specified, or by a reduction of the gross rental fixed for telephones for such subscribers, The American Bell Telephone Company reserving to itself the full and unqualified right to adopt either or both of said modes), for a change in the net rental from you on such Telephones, as follows:

1725

	Net rental for each telephone and for each transmitter per year.
Exchange subscribers paying \$24 per annum, or less, for exchange service.....	\$3.00
Exchange subscribers paying exceeding \$24, and not exceeding \$27 per annum, for exchange service...	3.12½
Exchange subscribers paying exceeding \$27, and not exceeding \$30 per annum, for exchange service...	3.37½
Exchange subscribers paying exceeding \$30, and not exceeding \$33 per annum, for exchange service...	3.87½
Exchange subscribers paying exceeding \$33, and not exceeding \$36 per annum, for exchange service...	4.50
Exchange subscribers paying exceeding \$36, and not exceeding \$39 per annum, for exchange service...	5.25
Exchange subscribers paying exceeding \$39, and not exceeding \$42 per annum, for exchange service...	6.00
Exchange subscribers paying exceeding \$42, and not exceeding \$45 per annum, for exchange service...	6.75

Where subscribers pay above \$45 per annum, the present net rentals will stand.

Where the present contract relations and discounts give a less net rental than the net rental herein named, the contract will be followed:

The monthly rental bills will be rendered from this office in the

form hitherto used, at the rates and upon the terms of rental, discount and payment fixed by the contract.

You are asked to send to the Treasurer, on the last business day of each month, beginning with July, 1885, a statement over the signature of your Treasurer, or other official having the best knowledge of the facts, showing the number of stations in each Exchange for which the rates per station named herein were charged during the month, the number of stations at each rate, the number of Telephones at each such station, and the number of days during the month for which such charge was made.

The amount which, under the terms of this circular is to be returned to you, will be calculated from the statement as rendered, and notified to you, and placed to your credit in account with this Company.

Please give us early notice of your receipt and acceptance hereof.

Yours respectfully,
(Sgd.)

THEO. N. VAIL,
General Manager.

1726

Boston, July 30th, 1885.

To our licensees for exchange purposes.

GENTLEMEN:

From July 1st, 1885, instruments used for Exchange purposes, and for which your Company receives no consideration to a number not greater than three (3 per cent) per cent. of the total instruments charged to your Company for exchange purposes, will be furnished free of rental.

Yours respectfully,
(Sd.)

THEO. N. VAIL,
Genl. Manager.

The American Bell Telephone Company.

Boston, August 4th, 1885.

To holders of contracts for exchanges:

Referring to the General Manager's circular of July 30, 1885, relating to instruments used for Exchange purposes and for which your company receives no consideration, and to carry out the purposes of that circular, the following method will be adopted.

Rental will be charged on all instruments as heretofore, and you are requested to add to the statement which by the Company's circular of June 30th, 1885, you are asked to make monthly, a statement of the number of instruments upon which rental has been charged to you for that month and which have been used for exchange purposes but for which no consideration has been received.

From the information so furnished the proper amount will be calculated and placed to your credit after notice of the same has been sent to you.

(Sd.)

WM. R. DRIVER, *Treasurer.*

Form 387-A.

Subject: Special Long Distance Transmitter.

The American Bell Telephone Co.

Boston, July 1, 1887.

To our licensees:

Certain question- which we have had to consider are not yet in such shape as will enable us to adopt and furnish the special long distance transmitter as a standard instrument, but to supply what seems to be a demand, as shown by the frequent applications 1727 we have received for these transmitters, we have decided to make and furnish them as a special instrument, to such of our licensees as desire to obtain them, charging in addition to the annual rental and royalty as per extra-territorial contracts, three dollars on each, of the excess in cost of manufacture over that of the Blake transmitter.

These instruments are intended for use, and are to be used only on such lines as are operated under our extra-territorial contracts, and not for any other purpose.

With ordinary usage they are not liable to get out of order, and as they will be carefully examined and tested before shipment, should not be opened or taken apart except in case of absolute necessity. When placed in position for use, they should be firmly secured and in such position as to keep the top of the carbon chamber in a horizontal position.

The connections are made by the use of the binding posts, in the same manner as the Blake transmitter.

The best results are obtained by using three cells of Fuller battery of four cells of La Clanche battery. With Gravity battery at least six cells should be used.

The primary circuit resistance should be kept as low as possible; care must therefore be taken to keep the battery and connections clean. The battery connecting wires should be large as convenient.

When first set up the carbon should be brought into place by shouting loudly into the transmitter some uniform note, at the same time gently rapping the adjustable arm.

If after thoroughly shaking down the carbon (which if properly done should half fill the side holes) the instrument appears not to work well, see if the battery resistance is not too high.

It is in good condition when it transmits the voice with perfect distinctness when spoken into in a moderate tone with the lips close to but not touching the mouth piece.

In ordering these special long distance transmitters, Form 199 must be used, giving thereon the station at, and the line on which the instrument ought to be used.

Yours respectfully,
(Sd.)

JOHN E. HUDSON,
General Manager.

The American Bell Telephone Company.

Boston, January 31, 1894.

To our licensees:

The American Bell Telephone Company proposes to reduce the rental for magneto telephones, and to that end announces that the gross annual rental for each magneto telephone is fixed at five dollars; and that the discount thereon and the net annual rental payable by you, beginning with February 1, 1894, will be as follows:

Exchange Purposes.

On Each Magneto Telephone.

	Discount.	Net rental per annum.
Exchange subscribers paying \$24 per annum or less for exchange service	85%	\$0.75
Exchange subscribers paying exceeding \$24 and not exceeding \$30 per annum for exchange service	80%	1.00
Exchange subscribers paying exceeding \$30 and not exceeding \$36 per annum for exchange service	75%	1.25
Exchange subscribers paying exceeding \$36 and not exceeding \$42 per annum for exchange service	70%	1.50
Exchange subscribers paying exceeding \$42 and not exceeding \$48 per annum for exchange service	65%	1.75
Exchange subscribers paying exceeding \$48 and not exceeding \$54 per annum for exchange service	60%	2.00
Exchange subscribers paying exceeding \$54 and not exceeding \$60 per annum for exchange service	55%	2.25
Exchange subscribers paying exceeding \$60 per annum for exchange service	50%	2.50

Toll Station Purposes.

Magneto telephone used at toll stations, and all magneto telephones used for extra-territorial purposes	50%	2.50
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Private Line Purposes.

Magneto telephones used for private lines and other similar purpose	85%	0.75
---	-----	------

The monthly rental bills will be rendered from this office in the form hitherto used, and for convenience of accounting, at the rate of two dollars and fifty cents per annum for each magneto telephone.

You are asked to send to the treasurer on the last business day of each month, beginning with February, 1894, a statement over the signature of the official having the best knowledge of the facts, showing the number of stations in each exchange for which the rates per station named herein were charged during the month, the number of stations at each rate, the number of magneto telephones at each such station, and the number of days during the month for which such charge was made.

The amount, which under the terms of this circular is to 1729 be returned to you, will be calculated from the statement so rendered, and notified to you and placed to your credit in account with this company.

The amount, which under the terms of this circular is to be returned to you on account of magneto telephones used for private lines and other similar purposes, will be adjusted upon receipt of a bill of statement similar to that which you send for rebate for fire and police service.

As to magneto telephones, this letter will supersede the circular of June 30, 1885 (Form 347), but such circular shall remain in force for all other telephones.

Please give us early notice of your receipt and acceptance hereof.

Yours respectfully,

(Sd.)

C. JAY FRENCH,
General Manager.

The Southwestern Telegraph and Telephone Company.

Extract from the Minutes of a Meeting of the Directors of This Company Held on February 2, 1894.

"Voted: That the liberal concession offered by the American Bell Telephone Company in their circular letter of January 31, 1894, on the royalty charged for the use of magneto telephones be accepted with thanks."

1730

Copy.

Rates for Instruments for Private Lines and Other Purposes.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

Boston, March 7, 1894.

To licensees for the "Supply of Telephones for Private Lines and Other Purposes":

Until further notice instruments can be leased for the following purposes at the rates given below.

For a Set Consisting of a Magneto Telephone and a Battery Transmitter.

Annual rental.

For private lines \$10.00 per set.

A private line is a line consisting of only a single circuit, which shall not be permanently *not* temporarily connected with any other circuit, and the telephones on which are to be used only for the individual and private business of the lessees, and only by them and their employees. Such private line shall not extend more than twenty-five miles beyond the municipal limits of the city or town in which one end of the line is situated, nor shall any such line or circuit be used for more than four individuals, firms or corporations, nor have more than eight stations. No business is to be transacted by or through them for any consideration or toll to be paid by other persons than the lessees or other parties named: nor shall business messages, market quotations, or news for sale or publication, or messages in respect of the transmission, collection, delivery, publication, sale or use of which any consideration or toll is to be paid by any other person, be transmitted over such line.

For club lines \$10.00 per set.

A Club Line is a line consisting of only a single circuit, connecting not less than five individuals, firms or corporations, without regard to the number of stations, or having not less than nine stations, without regard to the number of parties connected, all of the stations of which are within the same municipality, or within five miles of its principal post-office, to be used by not more than one party at each station. In other respects the use is to be the same as that above stated for private lines.

For social lines \$3.00 per set.

A Social Line is a line consisting of a single circuit only, which shall not be permanently or temporarily connected with any other circuit, all the stations of which are within the same municipality, and the telephone- on which are to be used only for connecting persons and families for social and household purposes, and by not more than one party at each station.

1731

Annual rental.

For speaking tube purposes (above-described set) . \$3.00 per set.

Speaking Tube Telephones are to be of the kind especially constructed and designated for that purpose, and are to be used only to connect stations, all of which are to be on the same promises of one individual, firm or corporation, without passing over the land of any other person (except a road or watercourse); or they may be used for connecting a Licensee's house, stable, and other domestic or farm buildings, by passing over intervening land; but all stations connected by a speaking-tube line are to be within one circle or half a mile diameter.

Special Speaking Tube Set, Consisting of Magneto Telephone and Battery Transmitter.

For "Hotel" purposes (includes call-bell) \$3.50 per set.

For "Office" or "Factory" purposes (does not include call-bell) \$3.00 per set.

Licensees will be allowed a discount of fifty per cent on the above rates.

A magneto receiver or a magneto transmitter can be rented at \$1.00 each or at \$2.00 per pair for either of the above purposes, per annum.

This circular will take effect from February 1, 1894, and cancels circular (Form 191-B) dated June 15, 1881.

No magneto telephone or magneto transmitters other than those furnished by this Company to its licensees and rented by them, can be used in connection with battery transmitters or other apparatus covered by patents owned or controlled by this Company.

Licensees are asked to examine the prices which they at present charge for whatever they do, lease or furnish to this class of subscribers, other than the instruments, to see if any change in such prices should be made, with the view of supplying all demands for this class of business.

"Long distance" or "solid back" battery transmitters will not be furnished for use on private lines, except where such lines are metallic circuit owned, maintained and leased by the licensees.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Rates for Instruments for Fire, Police, and Branch Lines Purposes.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

Boston, March 15, 1894.

To licensees for the "Supply of Telephones for Private Lines and Other Purposes:"

Until further notice instruments can be leased for the following purposes at the rates given below:

For Fire Alarm, Police, or Police Patrol Purposes.

On Condition that the instruments are to be used only on 1732 lines owned and operated by a city, town or other municipal corporation upon its own business, and that none of such lines or stations connect with, or in any sense form a part of the telephone exchange, licensees can furnish instruments, under our usual private line lease (Form 186-E), for use by such city, town or other municipal corporation, for either of the above purposes.

For each set of instruments, consisting of a magneto telephone and a battery transmitter, \$10.00 per annum.

For Branch Line Purposes.

A branch line is a line connecting cities, towns, or places, in which no telephone exchange is established, with each other, and, except as hereinafter provided, used only for personal communication, as hereinafter defined, between customers and one such city, town or place, and customers in another such city, town or place. Such lines are not to be used to connect with each other parties in the same town, city or place: nor are they to be used to connect any two or more such cities towns or places, if and after same shall have been included in an exchange district; nor without special leave of the lessor to connect with any such city, town or place, after an exchange shall have been established therein; nor directly or indirectly to connect any two or more exchanges with each other. (Extract from branch line contract. (Form 251-C).

For each set of instruments, consisting of a magneto telephone and a battery transmitter, \$10.00 per annum.

(Branch line contracts are made only by this company and upon special application for each line.)

Licensees will be allowed a discount of fifty per cent on the above rates.

A magneto receiver or a magneto transmitter can be rented at

\$1.00 each or at \$2.00 per pair for either of the above purposes, per annum.

This circular will take effect from Feb. 1, 1894, and cancels all previous letters, giving special rates for instruments for any of the above named purposes.

No magneto telephones or magneto transmitters other than those furnished by this Company to its licensees and rented by them, can be used in connection with the battery transmitters or other apparatus covered by patents owned or controlled by this company.

Licensees are asked to examine prices which they at present charge for whatever they do, lease or furnish for any of these purposes, other than the instruments, to see if any change in such prices should be made, with the view of supplying all demands for these classes of business.

1733 "Long distance" or "solid back" battery transmitters will not be furnished for any of the foregoing purposes except where the lines are metallic circuit, owned, maintained and operated or leased by the licensee.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Copy.

Subject: Sample Instruments.

Boston, April 6th, 1894.

The Southwestern Telegraph and Telephone Company, Dallas,
Texas.

DEAR SIR:

We shall send you by express in due course of business, on loan account, a new form of magneto telephone (called the "Watch" form) and a magneto transmitter No. 3 (called the spoon form).

These are sent that you may have more definite information respecting them than could be obtained from a printed or written description.

These magneto instruments will be furnished to licensees under the usual contracts held by them, at the same rate as the ordinary magneto telephone (hand) is furnished, and can be rented at the rates specified in our circulars of January 31, 1894 (Form 457) and March 7, 1894 (Form 465A).

We shall also send with these instruments and on the same account a sample of the Western Electric Co's new call-bell, style No. 14, designed more especially for private line service.

The Western Electric Co. advise us that this call-bell will be furnished to our licensees at \$4.50 each and with backboard and battery box at \$5.50 each.

The attached drawing No. IV-A-49 shows the method of connecting when the call-bell is used with the magneto transmitter and

drawing number XI-A-17 when it is used with a battery transmitter.

1734 Our usual receipt for these will be sent you, which kindly sign, when the articles are received, and return to us.

Yours truly,
(Sd.)

C. JAY FRENCH,
Gen. Manager.

Copy.

Special Long Distance Transmitter.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

Boston, July 20, 1894.

To our licensees:

Referring to our circular dated July 1, 1887 (Form 387A) relating to the "special long-distance transmitter," "this company will bear the entire cost of manufacture of instruments of this pattern, and also of "solid-back" transmitters, and of Blake transmitters fitted with the granular carbon button, which may be furnished after this date.

The purposes for and the conditions under which licensees have heretofore been authorized to rent or use these special instruments remain unchanged.

No magneto-telephone or magneto-transmitters other than those furnished by this company to its licensees, and rented by them, can be used in connection with battery transmitters or other apparatus covered by patents owned or controlled by this company.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Copy.

Rental of Battery Transmitters.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

Boston, February 15, 1895.

To our licensees:

Pending the appeal from the recent decision in the Berliner case and until the matter is reheard, the American Bell Telephone Com-

pany will make the net annual rental payable by you on
 1735 standard battery transmitters, beginning with February 1,
 1895, as follows:

Exchange Purposes.

Each Battery Transmitter.

	Discount (gross \$10.00).	Net rental per annum.
Exchange subscribers paying \$24 per annum or less for exchange service.....	92½ %	0.75
Exchange subscribers paying exceeding \$24 and not exceeding \$30 per annum for ex- change service.....	90 %	1.00
Exchange subscribers paying exceeding \$30 and not exceeding \$36 per annum for ex- change service.....	87½ %	1.25
Exchange subscribers paying exceeding \$36 and not exceeding \$42 per annum for ex- change service.....	85 %	1.50
Exchange subscribers paying exceeding \$42 and not exceeding \$48 per annum for ex- change service.....	82½ %	1.75
Exchange subscribers paying exceeding \$48 and not exceeding \$54 per annum for ex- change service.....	80 %	2.00
Exchange subscribers paying exceeding \$54 and not exceeding \$60 per annum for ex- change service.....	77½ %	2.25
Exchange subscribers paying exceeding \$60 and not exceeding \$66 per annum for ex- change service.....	75 %	2.50
Exchange subscribers paying exceeding \$66 and not exceeding \$72 per annum for ex- change service.....	72½ %	2.75
Exchange subscribers paying exceeding \$72 and not exceeding \$78 per annum for ex- change service.....	70 %	\$3.00
Exchange subscribers paying exceeding \$78 and not exceeding \$84 per annum for ex- change service.....	67½ %	3.25
Exchange subscribers paying exceeding \$84 and not exceeding \$90 per annum for ex- change service.....	65 %	3.50
Exchange subscribers paying exceeding \$90 and not exceeding \$96 per annum for ex- change service.....	62½ %	3.75
Exchange subscribers paying exceeding \$96 and not exceeding \$102 per annum for exchange service.....	60 %	4.00

	Discount (gross \$10.00).	Net rental per annum.
Exchange subscribers paying exceeding \$102 and not exceeding \$108 per annum for exchange service.....	57½%	4.25
Exchange subscribers paying exceeding \$108 and not exceeding \$114 per annum for exchange service.....	55%	4.50
Exchange subscribers paying exceeding \$114 and not exceeding \$120 per annum for exchange service.....	52½%	4.75
Exchange subscribers paying exceeding \$120 per annum for exchange service.....	50%	5.00

Toll Station Purposes.

Battery transmitters used at toll stations and for extra-territorial purposes.....	50%	5.00
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1736

Private Line Purposes.

Battery transmitters used for private lines and other similar purposes.....	82½%	1.75
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The monthly rental bills will be rendered from this office in the form hitherto used, and for convenience of accounting, at the rate of five dollars per annum for each battery transmitter.

You are asked to send to the Treasurer on the last business day of each month, beginning with February 1895, a statement over the signature of the official having the best knowledge of the facts, showing the number of stations in each exchange for which the rates per stations at each rate, the number of battery transmitters at each such station, and the number of days during the month for which such charge was made.

The amount, which under the terms of this circular is to be returned to you, will be calculated from the statement so rendered and notified to you and placed to your credit in account with this company. The amount, which under the terms of this circular is to be returned to you on account of battery transmitters used for private lines and other similar purposes, will be adjusted upon receipt of a bill or statement similar to that which you send for rebate for fire and police service.

As to battery transmitters this circular suspends the circular of June 30, 1885. (Form 347.)

Please give us early notice of your receipt and acceptance hereof.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Extract from the minutes of a meeting of the Directors held on
April 5, 1895.

"Voted: That the schedule of rates presented be adopted with such modifications as may be made by a committee consisting of the President, Treasurer and Gen. Sherwin, after a conference with the American Bell Telephone Company."

1737

Copy.

Rates for Instruments for Private Lines and Other Purposes.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

Boston, February 15, 1895.

To Licensees for the "Supply of Telephone- for Private Lines and other purposes:"

Until further notice instruments can be leased for the following purposes at the rates given below:

For a Set Consisting of a Magneto Telephone and a Battery Transmitter.

Annual rental.

For private lines \$5.00 per set.

A private line is a line consisting of only a single circuit, which shall not be permanently or temporarily connected with any other circuit, and the telephones on which are to be used only for the individual and private business of the lessees, and only by them and their employees. Such private line shall not extend more than twenty-five miles beyond the municipal limits of the city or town in which one end of the line is situated, nor shall any such line or circuit be used for more than four individuals, firms, or corporations, nor have more than eight stations. No business is to be transacted by or through them for any consideration or toll to be paid by other persons than the lessees or other parties named; nor shall business messages, market quotations or news for sale or publication, or messages in respect of the transmission, collection, delivery, publication, sale or use of which any consideration or toll is to be paid by any other person, be transmitted over such lines.

Annual rental.

For club lines \$5.00 per set.

A Club Line is a line consisting of only a single circuit connecting not less than five individuals, firms or corporations without regard to the number of stations, or having not less than nine stations without regard to the number of parties connected, all of the stations of which are within the same municipality, or within five miles or its principal post-office, to be used by not more than one party at each station. On other respects the use is to be the same as that above stated for private lines.

For social lines \$3.00 per set.

A Social Line is a line consisting of a single circuit only which shall not be permanently or temporarily connected with any other circuit, all the stations of which are within the same municipality, and the telephones on which are to be used only for connecting persons and families for social and household purposes and by not more than one party at each station.

1738 For speaking-tube purposes (above-described set) \$3.00 per set.

Speaking-tube Telephones are to be of the kind especially constructed and designated for that purpose, and are to be used only to connect stations all of which are to be on the same premises of one individual, firm or corporation without passing over the land of any other person (except a road or water-course): or they may be used for connecting a Licensee's house, stable, and other domestic or farm buildings, by passing over intervening land; but all stations connected by a speaking-tube line are to be within one circle of half a mile diameter.

Special Speaking-tube Set, Consisting of Magneto Telephone and Battery Transmitter.

For "Hotel" purposes (includes call-bell) \$3.50 per set.
 For "Office" or "Factory" purposes (does not include call-bell) \$3.00 per set.

Licensees will be allowed a discount of fifty per cent on the above rates.

A magneto receiver or a magneto transmitter can be rented at \$1.00 each or at \$2.00 per pair for either of the above purposes, per annum.

This circular will take effect from February 1, 1895, and suspends circular (Form 465A) dated March 7, 1894.

No magneto telephone or magneto transmitter other than those furnished by this company to its licensees and rented by them, can be used in connection with battery transmitters or other apparatus covered by patents owned or controlled by this company.

Licensees are asked to examine the prices which they at present charge for whatever they do, lease or furnish this class of subscribers, other than the instruments, to see if any change in such prices should be made, with the view of supplying all demands for this class of business.

"Long distance" or "solid back" battery transmitters will not be furnished for use on private lines, except where such lines, are metallic circuits, owned, maintained and leased by the licensee.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Rates for Instruments for Fire, Police and Branch Line Purposes.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

1739

Boston, February 15, 1895.

To Licensees for the "Supply of Telephones for Private Lines and Other Purposes":

Until further notice, instruments can be leased for the following purposes at the rates given below:

For Fire Alarm, Police, or Police Patrol Purposes.

On condition that the instruments are to be used only on lines owned and operated by a city, town or other municipal corporation upon its own business, and that none of such lines or stations connect with, or in any sense form a part of the telephone exchange. Licensees can furnish instruments, under our usual private line lease (Form 186E), for use by such city, town or other municipal corporation, for either of the above purposes.

For each set of instruments, consisting of a magneto telephone and a battery transmitter, \$5.00 per annum.

For Branch Line Purposes.

A Branch line is a line connecting cities, towns or places, in which no telephone exchange is established, with each other, and, except as hereinafter provided, used only for personal communication, as hereinafter defined, between customers in one such city, town or

place, and customers in another such city, town or place. Such lines are not to be used to connect with each other parties in the same city, town or place: nor are they to be used to connect any two or more such cities, towns or places, if and after the same shall have been included in an exchange district; nor without special leave of the lessor to connect with any such city, town or place, after an exchange shall have been established therein; nor directly nor indirectly to connect any two or more exchanges with each other. (Extract from Branch Line contract Form 251C.)

For each set of instruments, consisting of a magneto telephone and a battery transmitter, \$5.00 per annum.

(Branch line contracts are made only by this company and upon special application for each line.)

Licensees will be allowed a discount of fifty per cent on the above rates.

A magneto receiver or a magneto transmitter can be rented at \$1.00 each or at \$2.00 per pair for either of the above purposes, per annum.

This circular will take effect from February 1, 1895 and suspends circular dated March 15, 1894 (Form 466).

No magneto telephones or magneto transmitters other than those furnished by this company to its licensees and rented by them, can be used in connection with battery transmitters or other apparatus covered by patents owned or controlled by this company.

Licensees are asked to examine the prices which they at present charge for whatever they do, lease or furnish for any of these purposes other than the instruments, to see if any change in such prices should be made, with the view of supplying all demands for these classes of business.

"Long distance" or "solid back" battery transmitters will not be furnished for any of the foregoing purposes except where the lines are metallic circuit, owned, maintained and operated or leased by the licensee.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Copy.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

Boston, May 2, 1898.

To our licensees:

The American Bell Telephone Company proposes to extend the provisions of the circular of January 31, 1894 (Form 457), and of February 15, 1895 (Form 477), (as of January 1, 1898), to the cases below named, and as follows:

First. Instruments used at toll stations within the limits of an exchange, or used at toll stations on extra-territorial lines shall come under said circulars as if used for exchange purposes by subscribers paying yearly amounts equal to the gross annual tolls actually received at said several stations.

Second. On instruments on hand subject to rental, but not in use,—that is, instruments in stock,—the net rate shall be that fixed in said circulars upon instruments furnished for exchange service at \$24.00 or less per annum: that is to say, 75 cents yearly for each instrument.

And, referring to our circular letter of July 30, 1885 which provides that "instruments used for exchange purposes and for which your company receives no consideration, to a number not greater than three per cent of the total instruments charged to your company for exchange purposes, will be furnished free of rental," the net rate for such instruments in excess of said three per cent shall be 1741 that above fixed for instruments in stock, namely, 75 cents per annum each. Monthly bills will be rendered as hitherto at the rates named in said circulars, Forms 457 and 477.

At the end of the current month please send to the Treasurer an official statement from January 1, 1898, to that date, and thereafter at the end of each month a statement for that month, showing the number of instruments furnished you by this company, both magneto telephones and battery transmitters to which this circular applies, and the facts in relation thereto sufficient to show in detail the amount of abatement upon each such instrument under the terms hereof.

From the statement so rendered the allowance coming to you under the terms of this circular will be computed and the amount thereof placed to your credit.

Please give us early notice of your receipt and acceptance hereof.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Copy.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

Boston, May 2, 1898.

Licenseses of the American Bell Telephone Company:

Referring to the licenses for extra territorial connecting lines granted you by this Company, and to your agreement therein contained to pay this Company a portion or fraction of the gross receipts from business done on such lines, this Company proposes to release you and does hereby release you upon your acceptance hereof, from

your obligation to make such payment from business done after April 30, 1898.

1742 Referring to the right reserved to this Company in the licenses for exchanges granted you by this company, to connect such exchanges with telegraph offices, and referring also to the arrangement made between us by which you receive one half of the commissions payable to this Company by telegraph companies upon messages turned over to such telegraph companies by said exchanges (such arrangement having been made on the condition that at your own cost, and without charge or expense to this Company, you bill, equip and maintain the lines connecting such exchanges and telegraph offices and furnish all instruments necessary for the operation thereof except telephones and transmitters to be used in the telegraph offices, and that such lines when built become and remain the property of this Company). This Company now proposes, until further notice, to give you the full amount of such commission instead of one half thereof, provided you also furnish the telephones and transmitters to be used in the telegraph offices.

The net rate to be paid by you for each such telephone and transmitter shall be the lowest rate named in the circulars of January 31, 1894 (Form 457), and of February 15, 1895 (Form 477): that is, seventy-five cents per annum for each instrument. Such instruments will be included in the regular monthly bills at the gross rates named in said circulars.

Application for connection with telegraph offices must be made to this Company as heretofore.

Please give us early notice of your receipt and acceptance hereof.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

The Southwestern Telegraph and Telephone Company.

Extract from the Minutes of a Meeting of the Directors of This Company Held on May 11, 1898.

"Voted: That the thanks of the Company be extended to the American Bell Telephone Company for the concessions granted this Company under their circular letter dated May 2, 1898."

1743

Copy.

Instruments for Private Lines and Other Purposes.

The American Bell Telephone Company,

No. 125 Milk Street.

P. O. Drawer 2.

Boston, March 25, 1899.

The Southwestern Telegraph and Telephone Company, Dallas, Texas, licensee of the American Bell Telephone Company:

Referring to the circulars Form 478 and 479, dated February 15, 1895, this Company fixes the net rate to be paid by you, beginning with April 1, 1899, for magneto telephones and battery transmitters used for any and all of the purposes therein named, except branch line purposes, at seventy-five cents yearly for each instrument, being the lowest rate named in said circulars.

Referring to the contract between us (in most cases Form 1160) for the supply of telephones for private lines and other purposes, it is agreed that said contract shall be modified as hereinafter set forth.

a. The licensee, party of the second part to such contract, shall make and sign, in its own name directly, the leases to customers therein referred to.

b. It shall be excused, except upon special requests, from transmitting to us such leases and from reporting the names and locations of its customers thereunder.

c. And further, the provisions of the contract between us (in most cases Form 113D) for lines connecting exchanges with each other shall be extended to include all lines (except private lines) connecting cities, towns and places, in which an exchange is not established, with other or with an exchange, for which branch line contracts, so called, have heretofore been issued, and the first section of our circular Form 502, dated May 2, 1898, shall apply to instruments used on such lines. All branch line contracts now held by you covering lines wholly within your territory, are hereby cancelled, and are to be returned to this office. All licenses for branch lines now held by third parties shall, until other and special provision is made therefor, be continued as heretofore, and for
1744 instruments used thereunder our Licensees shall continue to pay the net rates fixed by our circular Form 479, dated Feb. 15, 1895.

This shall not be taken to authorize you to grant sub-licenses for toll lines without special permission.

Instruments used for above-named purposes will be included in the monthly bills and proper rebate will be made on receipt of monthly statements showing the number of instruments so used.

Please give us early notice of your receipt and acceptance hereof.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Copy.

American Telephone and Telegraph Company.

November 29, 1902.

The Southwestern Telegraph & Telephone Company, Dallas, Texas.

GENTLEMEN:

Enclosed herewith is a communication from The American Bell Telephone Company offering to accept, in lieu of the payments now made by you under your contracts with that Company by way of rental upon telephone instruments, a percentage of the total gross earnings of your Company, as defined in the circular.

This plan has been submitted to officers of practically all of the operating companies throughout the United States and seems to meet with general approval. It involves a substantial reduction in the amounts paid by the operating companies.

While I believe that the plan and the details as set out in the enclosed letter are entirely clear, I take the liberty of calling attention to some of the clauses in the letter, that their intent and purpose may be readily understood.

The second clause, as to the way in which the gross earnings of a sub-licensee company is which a Bell operating company is
1745 interested shall be dealt with, applies only to a few cases throughout the country in which an operating company has acquired an interest in a sub-licensee company. It is not impossible that other such cases may from time to time arise, and a rule should be established for dealing with them.

The methods of return and payment under this plan are assimilated as far as may be with those now in force.

The memorandum appended to the letter is for the sole purpose of securing uniformity of accounts and of methods of making up the gross earnings. The underlying principle on which the memorandum is based is, that the actual earnings of all telephones shall form part of the gross earnings, but that a telephone which is in fact free shall not be treated as if it contributed anything to the gross earnings.

It is only necessary to call attention to one provision of the memorandum, which is in the nature of a compromise.

It is easy to deal with the subjects-matter of clauses (a), (b), (d), (e), (f), (g), (h), and (i), for it is clear that the uses referred to in (a) and (b) involve the actual earnings, while those referred to

in (d) to (i), inclusive, do not involve actual earnings of such a character as to be counted into the gross earnings.

The matter referred to in (c), however, are incapable of accurate analysis. In some such cases telephones are furnished to municipal or other public corporations for an actual value received, and in other cases there is no direct actual value received, although the importance and necessity of giving the corporation telephones for which no cash payment is made may be just as great as in the former case. In some cases the corporation has the right by law to exact free telephones as a condition of the grant of a franchise, in which case the telephone is leased for the actual value received; while in other cases the corporation has no such right, and therefore the furnishing of a telephone free or at a discount is a voluntary act on the part of the operating company, for which technically it cannot be said to receive real value. It seems clear, therefore, that it is better to adopt an arbitrary rule covering all cases in which telephones are supplied to municipal or other public corporations without payment or at a discount, and the plan adopted, as stated in the memorandum, is that in all such cases, whatever may be the circumstances or conditions, such telephones shall be counted as contributing to the gross earnings of the operating company at the rate of nine dollars a year unless a larger sum is actually received in cash.

This compromise meets with the approval of the operating companies to whom it has been submitted. The matter is of small moment, and it is dealt with only that there may be a uniform basis upon which the returns and payments shall be made by all companies.

It is believed that the advantages of the new plan, over and above the reduction involved, will be apparent. It is fair and simple and will result in the elimination of a great amount of bookkeeping that is now necessary in order to determine the telephone rentals and rebates.

I will add that it is our expectation to relieve the operating companies from the obligations of keeping a record of each telephone instrument by its serial number as is required at present. This, however, will form the subject-matter of a subsequent communication.

For convenience, I enclose also a form of vote that would be a proper form by which to indicate your assent to the plan set out in the letter.

Very truly yours,
(Sd.)

F. P. FISH,
President.

Copy.

Resolution to be Passed by the Board of Directors of the Southwestern Telegraph and Telephone Company as to Letter from the American Bell Telephone Company Dated November 21, 1902.

A letter dated November 21, 1902, from the American Bell Telephone Company, was presented, offering to substitute for the 1747 amount payable by this Company under its license contracts by way of rental upon telephone instruments, four and one-half per cent ($4\frac{1}{2}\%$) of the total gross earnings of this company, as defined by said letter and the memorandum appended thereto, and thereupon it was

Voted: that such offer be accepted and that the President be authorized in the name and behalf of this Company to notify The American Bell Telephone Company of the acceptance thereof.

Copy.

The American Bell Telephone Company.

November 21, 1902.

The Southwestern Telegraph and Telephone Company, Dallas, Texas:

The American Bell Telephone Company hereby offers, until further notice, to substitute for the rental upon telephone instruments (magneto telephones and battery transmitters) payable by you under its license contracts held by you and circulars in modification thereof, four and one-half per cent ($4\frac{1}{2}\%$) of the total gross earnings of your company, and of any sub-companies through which you may operate, from exchange, toll and private line business and from all other business done in your territory in the operation of which telephones are now or may hereafter be used, including your receipts from sub-licensees.

If in any case you have acquired, or shall hereafter acquire, any interest in a sub-licensee company operating in your territory, a portion of the total gross earnings of such company proportionate to your said interest shall be treated as a part of your total gross earnings in lieu of a like proportion of your actual receipts from that company.

The amount due for each month will be determined by the total gross earnings of the second preceding month computed as herein provided.

Said percentage will cover all instruments in use by you or under your authority in your territory, including instruments used on switchboards or for other operating purposes and those for which no consideration is received by you, and also will cover those 1748 in stock, which last are not to exceed three per cent (3%) of the total number charged to you. It is understood that

you will use your best endeavors to limit the number of instruments to the needs of the service.

All instruments charged to you on the last day of any month in excess of the number in use and such three per cent in stock will be rates as earnings seventy-five cents per month each instrument, and the amount of such rated earnings will be included in your total gross earnings for that month in determining the amount to be paid by you.

A statement, over the signature of the proper accounting officer of your total gross earnings for each calendar month, computed as herein provided, with the number of instruments in use and in stock in your territory on the last day of that month, must be sent to the Treasurer of this company on or before the last day of the next succeeding month, and payment in Boston or New York funds be made on or before the tenth day of the following month, that being the month for which such payment is due.

Further statements of instruments will be made by you at such times and in detail as this company may from time to time require.

You are requested to give us early notice of your receipt and acceptance hereof, with a certified copy of the vote of your directors authorizing such acceptance.

This offer when accepted will not become binding until this company shall declare the plan effective, and upon such declaration shall take effect as of January 1, 1902. It shall not be construed to interfere with any adjustments of rental to which you may be entitled for periods previous to said date.

In order that the method of computing total gross earnings may be uniform, the memorandum hereto appended is to be read as part of this letter.

Yours respectively,
(Sd.)

C. J. FRENCH,
General Manager.

Copy.

Memorandum.

1749 In determining the total gross earnings hereinbefore referred to, the following special cases shall be treated as hereinafter indicated and methods of accounting for this purpose should be arranged accordingly.

There shall be included in such total gross earnings the value of service, rebates or discounts allowed:

(a) To corporations, other than public corporations, or to firms or persons, in return for pay station privileges, transportation, pole locations, attachments, rights of way, advertising, retainers and services, and generally in consideration of rights of value of any kind.

(b) "Municipal or other public corporations, in satisfaction of taxes, assessments of rates legally imposed.

(c) "Municipal or other public corporations in return for franchise, rights of way, pole locations, and generally for rights and privileges of any kind, or as a matter of courtesy or required by municipal or public regulation, except as provided above in (b).

Instruments furnished as indicated in (a) and (b) above are to be rated as earning your standard rates for like equipment and service. Instruments furnished as indicated in (c) are to be rated as earning seventy five cents per month per instrument for local service except in cases where an amount in excess of said sum is received in cash.

There shall not be included in such total gross earnings free service, rebates or discounts allowed:

- (d) As a matter of courtesy, except as provided above in (c).
- (e) To charitable, religious or educational institutions.
- (f) "Officers and employees of the company but not allowed as full or part compensation for services.
- (g) On toll charges, either by deductions from bills or by discount on coupons regularly issued when given under rules of the company.
- (h) On account of defective service.
- (i) On uncollectible accounts.

The Southwestern Telegraph and Telephone Company.

Extract from the Minutes of a Meeting of the Executive Committee of this Company Held on December 17, 1902.

"Referring to a letter dated November 21, 1902, from The American Bell Telephone Company, a copy here present, offering to substitute for the amount payable by this Company under its license contracts by way of rental upon telephone instruments, four 1750 and one-half per cent ($4\frac{1}{2}\%$) of the total gross earnings of this Company, as defined by said letter and the memorandum appended thereto, and thereupon it was

Voted: That such offer be accepted and that the President be authorized in the name and behalf of this Company to notify The American Bell Telephone Company of the acceptance thereof."

Copy.

American Telephone and Telegraph Company.

December 29, 1902.

The Southwestern Telegraph and Telephone Company, Dallas, Texas:

Referring to the letter of this company dated November 21, 1902 offering until further notice to substitute for the rental upon tele-

phone instruments (magneto telephones and battery transmitters) payable by your company under its license contracts and circulars in modification thereof, four and one-half (4½%) per cent of the total gross earnings of your company computed as therein provided, and to the clause in said letter "This offer when accepted will not become binding until this company shall declare the plan effective and upon such declaration shall take effect as of January 1, 1902."

You are advised that said plan is hereby declared effective as of and from January one, nineteen hundred and two.

Our Treasurer will send to you at early date a request for the necessary information to enable him to determine the amount to be credited to your company for the year 1902 under the above offer.

Yours respectfully,
(Sd.)

C. JAY FRENCH,
General Manager.

Discontinuance of Individual Numbers on Instruments.

Copy.

American Bell Telephone Company.

December 11, 1906.

The Southwestern Telegraph and Telephone Company, Dallas, Texas.

GENTLEMEN:

For the greater convenience of the operating companies 1751 in accounting for telephone transmitters and receivers, it has been decided to discontinue the practice of placing special individual numbers upon such instruments.

In the future, therefore, it will be necessary for operating companies to keep such records only as will enable them to report by code number the quantity of each style of instrument that may be returned, lost, stolen or destroyed, or in any way subject to credit.

Owing to the large stock of new instruments in hand or in process of manufacture which have already been numbered, it will be impossible to eliminate the numbers from the individual instruments for some time to come. In reporting instruments, however, these numbers may be disregarded.

Yours truly,
(Sd.)

R. W. DEVONSHIRE,
General Manager.

Copy.

American Bell Telephone Company.

Boston, Mass., July 25, 1907.

The Southwestern Telegraph and Telephone Company, Dallas, Texas.

GENTLEMEN:

In order to facilitate the delivery and return of instruments, we have arranged that hereafter telephones, transmitters and parts of instruments may be ordered direct from the Western Electric Company by the following method:

Beginning August 1, 1907, orders for new instruments may be sent to the house of the Western Electric Company from which you are now buying telephonic apparatus. For this purpose you may use either our form No. 152H (changing the address to Western Electric Company) or your own regular requisition blanks. All orders must be made in the name of the company holding contract with the American Bell Telephone Company.

Receipt Forms.

1752 The present receipt forms or similar forms to be furnished by the Western Electric Company will be required, and should be promptly signed by you and returned to the Western Electric house which takes your order.

Parts.

Parts of instruments for ordinary repairs now sold by this Company will, after August 1, 1907, be furnished and billed you by the Western Electric Company.

Returned Instruments.

Defective instruments may be returned by you to the nearest Western Electric warehouse. In this connection Form 159J will be used, the original being sent you by mail to Western Electric Company, and the duplicate with the instruments. Any missing parts will be charged to you by Western Electric Company, and any excess parts will be credited to you by that company.

Carriage Charges.

The Western Electric Company will pay the carriage charges from its factory to its warehouse nearest your territory, or, when instruments are shipped from factory, will make the same freight allowances as on telephonic apparatus. In the case of instruments returned, carriage charges to nearest Western Electric warehouse will be borne by you.

You will note that under this arrangement you will have some carriage charges, and, by reason of the proximity of a stock of instruments at the Western Electric warehouses, will find it possible to carry a smaller stock.

Yours very truly,
(Sd.)

R. W. DEVONSHIRE,
General Manager.

Copy.

American Telephone and Telegraph Company.

September 6, 1907.

1753 The Southwestern Telegraph and Telephone Company, Dallas, Texas.

GENTLEMEN:

We enclose a letter from The American Bell Telephone Company in relation to the sale of telephones, transmitters and telephonic apparatus which meets with our approval and with that of the officials of the operating companies generally. There are conditions existing which make it very desirable to have the Western Electric Company take the field promptly and we will appreciate action by your Company at the earliest possible date.

Yours very truly,
(Sd.)

EDW. J. HALL,
Vice President.

Copy.

American Bell Telephone Company.

September 6, 1907.

The Southwestern Telegraph and Telephone Company, Dallas, Texas.

GENTLEMEN:

There has been a very general expression of opinion in which we concur, that it would be desirable to have the Western Electric Company authorized by us to sell telephones, transmitters and telephonic apparatus freely in the open market to all buyers.

If you are in accord with this view, please send us as soon as you can conveniently a certified copy of a vote of your directors or Executive Committee, expressing the consent of your Company in the form which we enclose for your convenience.

Yours very truly,
(Sd.)

R. W. DEVONSHIRE,
General Manager.

Copy.

Whereas it has been found desirable that The American
1754 Bell Telephone Company should have the power to authorize
The Western Electric Company to sell telephones and Trans-
mitters in the open market to all buyers, and

Whereas the exclusive right to use telephones for certain purposes
granted to this Company by said The American Bell Telephone
Company in its license contracts may be construed to prevent such
sale.

Resolved: that the President be authorized to notify The Ameri-
can Bell Telephone Company that this Company agrees that said
license contracts shall be so construed as not to prevent The Ameri-
can Bell Telephone Company from authorizing such sale.

Copy.

The American Bell Telephone Company.

Boston, October 3, 1907.

The Southwestern Telegraph and Telephone Company, Dallas,
Texas.

GENTLEMEN:

Referring to the vote of your Executive Committee passed Sep-
tember 17, 1907, touching the sale of telephones and transmitters
in the open market to all buyers, I am authorized to accept for The
American Bell Telephone Company the construction of a license
contract expressed in said vote and to inform you that this Company
will act in accordance therewith.

Yours very truly,
(Sd.)

THEO. N. VAIL,
President.

Copy.

American Telephone and Telegraph Company.

October 9th, 1920.

The Southwestern Telegraph and Telephone Company, Dallas,
Texas.

GENTLEMEN:

Your system of lines and exchanges has heretofore been
1755 operated solely with instruments furnished by this Company.
Even in the case of a sublicense, sublicensee has been re-
quired to use such instruments upon all lines connecting with your

system. As the Western Electric Company is about to sell telephone instruments and appliances, it seems to us that this is an appropriate time to revise and extend somewhat rules which have heretofore been followed with regard to the telephone instruments to be used upon connecting lines. We suggest, therefore, that hereafter in making sublicenses and contracts for the interchange of business you do not limit yourself solely to those who use telephones furnished by us or sold by the Western Electric Company but that, in appropriate cases, you make such contracts with companies and individuals even when they use other telephones, provided first class instruments are used and the lines are maintained and operated at such a standard of efficiency as not to impair the quality of service furnished over the joint lines.

This connection with such companies and individuals should be limited to farmers' lines, so-called, or lines of a similar character, to lines operated by railroad, and to all exchanges located wholly within your territory and not connected with lines and exchanges in the territory of any other of our licensees.

It is important in making such contracts that great care be taken, in order that no system may be built up that will impair the value to the public of your own system or interfere with the system established by your neighbors.

Yours very truly,
(Sd.)

THEO. N. VAIL,
President.

Copy.

American Bell Telephone Company.

Delivery of Telegraph Messages.

March 25, 1910.

The Southwestern Telegraph and Telephone Company, Dallas,
Texas.

GENTLEMEN:

Referring to the provisions in our License Contract for the 1756 delivery to this Company or its appointees of telegraph messages and particularly to our circular letter of May 2nd, 1898 under which you receive the entire commission payable to this Company by telegraph companies on messages turned over to such companies, this company believes that it will be for the advantage not only of telephone subscribers but also of the public that no distinction be made between the collection and delivery by telephone of such messages and other communications by telephone and that the telegraph companies be permitted to receive and deliver telegraph messages by any exchange telephone installed at the usual business rate. This Company, therefore, releases you from any obligation to keep an account of such messages and recommends that

the practice of furnishing telephones to telegraph companies especially for the receipt and delivery of telegrams be discontinued and that telegraph companies be permitted to use therefor any exchange telephone that is furnished at the usual business rate.

Yours respectfully,
(Sd.)

R. W. DEVONSHIRE,
General Manager.

Copy.

The American Bell Telephone Company.

December 16, 1912.

Mr. H. J. Pettengill, President
The Southwestern Telegraph and Telephone Company,
St. Louis, Mo.

DEAR SIR:

The American Bell Telephone Company hereby offers to substitute the following method of computing total gross earnings in place of the method described in our letter of November 21, 1902, and subsequent interpretations thereof.

The total gross earnings, for the purpose of determining the amount, of which you pay us $4\frac{1}{2}\%$, shall comprise the accounts described and defined in our Accounting Circular No. 8 as follows:

Account 500 Subscriber's Station Revenues.

" 501 Public Pay Station Revenues.

" 504 Private Exchange Lines.

" 510 Message Tolls.

1757 From the total of the foregoing shall be deducted—
Account 304 Uncollectible Operating Revenues.

To the difference between the aforesaid revenues and the aforesaid deductions therefrom shall be added:

a) The sum of seventy-five cents per instrument per month for all instruments not in use in excess of 3% of the total number standing charged to you on the last day of such month (the 3% representing the maximum number believed to be necessary for stock). This is the present basis as to excess stock.

b) For sublicensed or other operating telephone companies not directly licensed by this Company in which you own a majority of the stock and which are in effect operated as a part of your telephone system the same proportion of their gross revenues (computed as aforesaid) as the proportion of their stock which you own.

NOTE.—On application for the exclusion of such gross revenues of any such subsidiary company the question will be carefully considered and determined on the facts in each case.

The purpose of this offer is to simplify the method of computation and to bring it closely into conformity with the accounting system established by the Interstate Commerce Commission.

This method of computation will take effect January 1, 1913, for those licensees which accept it prior to January 31, 1913. The first bills on the new method of computation will be those rendered early in March 1913.

A suggested form of resolution for the purpose is enclosed herewith. If adopted by your company kindly have the Secretary send to me a certified copy of such action.

Yours truly,

(Sd.)

C. C. DU BOIS,
Comptroller.

Copy.

A letter, dated December 16, 1912, from The American Bell Telephone Company was presented, offering, for the purpose of determining the amount of gross earnings of which this Company pays Four and a Half Per Cent, to substitute in place of the method now in use the method set forth in said letter and thereupon it was

Voted: that such offer be accepted and the President be authorized in the name and behalf of this Company to notify The American Bell Telephone Company of its acceptance thereof.

1758

Copy.

January 14th, 1913.

American Bell Telephone Company,
Mr. C. G. Du Bois, Comptroller,
15 Dey Street, New York, N. Y.

DEAR SIR:

At an adjourned special meeting of the Executive Committee of The Southwestern Telegraph and Telephone Company held today, it was voted to accept the offer contained in your letter dated December 16, 1912, relating to the payment by way of rental to your Company of four and one-half per cent ($4\frac{1}{2}\%$) of the total gross earnings of this Company.

I enclose a certified copy of the vote.

Yours truly,

THE SOUTHWESTERN TELEGRAPH AND
TELEPHONE COMPANY,
(Sd.) J. P. CROWLEY,
Secretary.

Copy.

The Southwestern Telegraph and Telephone Company.

Extract from the Minutes of a Meeting of the Executive Committee of this Company Held on January 14, 1913.

"A letter dated December 16, 1912, from The American Bell Telephone Company was presented, offering, for the purpose of determining the amount of gross earnings of which this Company pays Four and a Half Per Cent, to substitute in place of the method now in use the method set forth in said letter, and thereupon it was

Voted that such offer be accepted and the President be authorized in the name and behalf of this Company to notify The American Bell Telephone Company of its acceptance thereof."

Copy.

Shreeve and Vacuum Tube Repeaters.

The American Bell Telephone Company,

125 Milk Street.

P. O. Drawer 2.

1759

Boston, March 28, 1916.

Southwestern Telegraph & Telephone Co. (N. Y.),

St. Louis, Missouri,

Mr. H. J. Pettengill, President.

DEAR SIR:

I enclose a copy of two resolutions adopted by the Executive Committee of the American Telephone and Telegraph Company on March 15, 1916, relative to furnishing to the associated companies Shreeve and vacuum tube repeaters. A copy of our General Counsel's opinion upon this matter is also enclosed, as perhaps of interest.

If your company's construction of the License contract as amended, agrees with that set forth in these resolutions, will you please ask your Board of Directors or Executive Committee to pass a resolution assenting to this construction?

At your convenience please advise me of your company's action.

Yours truly,

(Sd.)

R. W. DEVONSHIRE,

General Manager.

Resolved: that the officers of this Company be and they are hereby directed to advise each of the associated companies that the license contracts, as amended, existing between this Company and each of its associated companies do not, as construed by this Company, require this Company to furnish to the associated companies what are

known as Shreeve and vacuum tube repeaters without a specific charge therefore in addition to the Four and One half per cent, ($4\frac{1}{2}\%$) payments under said contracts.

Resolved further: that the officers of this Company be permitted to furnish said repeaters without specific charge therefor in addition to said four and one-half per cent ($4\frac{1}{2}\%$) payment, to such of the associated companies as accept this construction of the said license contracts, upon the definite agreement by said companies that this

Company shall at any time have the right to discontinue said 1760 practice and to make reasonable charges, in addition to said four and one-half per cent ($4\frac{1}{2}\%$) payment, for all such repeaters thereafter furnished.

Copy.

New York, February 17, 1916 (M. R.).

Memorandum for U. N. Bethell, Esq., Senior Vice-President.

The Shreeve and Vacuum tube repeaters are devices for extending the radius for communication by telephone. When used in connection with telephonic communication, each of these devices accomplishes this purpose by reproducing in the relatively strong electric current passing through a second circuit the electrical undulations which characterize a much diminished current passing through the preceding circuit, the preceding circuit being connected with the second circuit through the repeater. The variations to be effected in the current in the second circuit are in each instance identical, this being accomplished in the case of the Shreeve repeater through mechanical means and in the case of the vacuum tube repeater through electrical means. So far as the question under consideration is concerned, it is unnecessary to make any distinction between the two classes of repeaters.

The question which is presented to me is whether these repeaters are telephones which the terms of the license contracts require this company to furnish to its associated companies as a part of the consideration for which the four and one-half per cent ($4\frac{1}{2}\%$) payment is made. In my opinion, this question should be answered in the negative.

I think it clear that each of these repeaters in a telephone in the sense that if the Bell patents had not expired, it could not legally be manufactured and sold except by license under them. This, however, is not the question.

The license payment did not pay for everything which the licensor was bound to furnish under the contracts. It paid the rental for the telephones which were leased but did not pay for "the inventions and call bells, switches, switchboards and other apparatus needed for such telephones lines which it (the licensor) can so license."

1761 Giving due weight to all of the provisions of these original contracts, it is my conclusion that by the telephones to be

furnished under them were meant the instruments which were to be furnished to the subscribers for their use and for which the licensees were to charge subscribers such rentals and royalty as might be fixed from time to time by the licensor.

If there was any doubt under the original contracts, I think it is removed by the modification of these contracts by which four and one-half per cent ($4\frac{1}{2}\%$) of the gross earnings was fixed as the measure of the payments under them. This modification was made by letter, sent to each of the licensee companies under date of November 21, 1902, and accepted by each of these companies. This letter contains the following language:

"The American Bell Telephone Company hereby offers, until further notice to substitute for the rental upon telephone instruments (magneto telephones and battery transmitters) payable by you under its license contracts held by you and circulars in modification thereof, four and one-half per cent ($4\frac{1}{2}\%$) of the total gross earnings of your company."

What has been underscored definitely describes the telephone instruments which the associated companies are entitled to have furnished in consideration of this payment. They are magneto telephones and battery transmitters. This language had at the date of said letter, and has now, a well defined meaning which does not include repeaters. Moreover, no repeater available for commercial use had been developed at the time these letters were written.

The number of repeaters now in use is very small, and no charge is being made for them. I think it desirable that this practice be continued so long as there is no extension in their use, but it should be with the definite understanding that the Company is not under obligation to continue it, and that it is without prejudice to the right of the Company to require payment for the repeaters at any time that it may wish to do so.

Yours very truly,

(Sd:)

N. T. GUERNSEY,
General Counsel.

Copy.

Southwestern Bell Telephone System.

April 25, 1916.

1762 The American Bell Telephone Company,
Mr. R. W. Devonshire, General Manager,
125 Milk Street, Boston, Mass.

DEAR SIR:

I enclose herewith copy of a resolution passed by the Executive Committee of The Southwestern Telegraph and Telephone Company

(New York) at a meeting held on April 25, 1916, relative to Shreeve and vacuum tube repeaters.

Yours truly,

THE SOUTHWESTERN TELEGRAPH AND
TELEPHONE COMPANY (N. Y.).

(Sd.) J. P. CROWLEY,
Secretary.

Copy.

American Telephone and Telegraph Company,

Telephone and Telegraph Building,

195 Broadway.

New York, December 5, 1917.

Mr. H. J. Pettengill, President,
Southwestern Bell Telephone System,
St. Louis, Mo.

DEAR MR. PETTENGILL:

The Executive Committee of this Company, in view of the extraordinary conditions due to the state of war now existing, today adopted a resolution authorizing the computation of the originating commissions payable under existing contracts by this Company to your companies, upon the following basis, beginning January 1, 1918:

(a) Where the "L" operator of the associated company as defined by this Company's operating rules is in charge of the communication, 25% of the cash receipts from each single connection upon which the associated company is entitled to a commission, not exceeding 30¢ for any single connection.

(b) Where the "L" operator of this Company as defined by this Company's operating rules is in charge of the communication, 25% of the cash receipts from each single connection upon which the associated company is entitled to a commission, not exceeding 12¢ for any single connection.

(c) On business originating at pay stations upon which the associated company is entitled to a commission if in class (a) twice the commission above provided for class (a) business, and if in class (b), twice the commission above provided for class (b) business.

This is upon the condition that this Company reserves the right at any time to discontinue the payment of said commissions upon the terms stated in this letter, and to resume their payment upon the terms of said contract.

1763 Please advise me at your convenience whether or not this temporary modification of these contracts is acceptable to you and your Executive Committee or Board of Directors.

Very truly yours,

(Sd.)

U. N. BETHELL,
Vice President.

Copy.

Southwestern Bell Telephone System.

St. Louis, December 19, 1917.

Mr. U. N. Bethell, Senior Vice President,
American Telephone and Telegraph Company,
195 Broadway, New York.

DEAR MR. BETHELL:

On behalf of The Southwestern Telegraph and Telephone Company, I accept the offer increasing the rates of originating commissions, as outlined in your letter of December 5th.

Extract from the minutes of the Board of Directors' Meeting, giving me authority to accept the offer is enclosed herewith.

Yours very truly,

THE SOUTHWESTERN TELEGRAPH AND
TELEPHONE COMPANY.

(Sd.) H. J. PETTENGILL,
President.

The Southwestern Telegraph and Telephone Company.

*Extract from the Minutes of a Meeting of the Board of Directors
Held on December 18, 1917.*

The President submitted the following letter (set out on page 110) from the Vice President of the American Telephone and Telegraph Company:

"Voted: That the President be and he hereby is authorized to accept the offer as outlined in above letter, and to notify the American Telephone and Telegraph Company in writing of said acceptance."

1764

No. 147.

Valuation of Instrument Service.

Quantities Oct. 1, 1919.	Transmitters.	Receivers.
In use at Subscribers' Stations.....	26,693	26,693
In use on private lines.....	27	27
In use at Switchboards.....	674	674
In use for testing purposes.....	79	67
In use for advertising purposes.....	5	5
Left on Subscribers' premises.....	26	26
In stock.....	811	882
Total chargeable to Houston Ex.....	28,305	28,374
Average No. of sets $(28305 + 28374 \div 2)$		28,340
Total Subscribers' stations, Houston, Oct. 1, 1919.....		26,693
Ratio of sets to stations.....		1.06

First Cost F. O. B. Houston Per Set.

Transmitters	2.00 ea.
Receiver	1.50 "
Induction coil.....	.95 "
Total	\$4.45

Annual Charges (in Percentage of First Cost).

Reserve for replacements.....	11%
Return on investment.....	8%
Repairs	1½%
Administration	1%
Contingencies	2%
Total	23½%

Annual Cost.

Per Set $(\$4.45 \times 23½\%)$	\$1.04 ea.
Per station in service $\$1.04 \times 1.06$	1.10 "

The Southwestern Telegraph & Telephone Company.
Houston, Texas.

1765 Valuation of Instrument Service.

1. Total licensee payment to A. T. T. Co. from Houston Exchange for the year ending Oct. 31, 1919....	\$42,791.92
2. Average No. of stations in service at Houston during same year.....	25,946
3. Total licensee payment per station per annum....	\$1.65
4. Value of instrument service per station per annum	\$1.10
5. Balance is annual payment per station for all other services	\$.55
6. Or a payment per month for all other services of ..	\$.046
7. Houston exchange payment for instrument service for year ending Oct. 31, 1919 (25,946 x \$1.10)	\$28,541.00
8. Houston exchange payment for all other services for year ending Oct. 31, 1919 (\$42,792—\$28,541)	\$14,251.00

No. 148.

"Photograph of Inductive Vacuum Tube Telephone Repeater Cord Circuit for Non-Loaded Lines."

This exhibit shows a type of telephone repeater furnished the Southwestern Company by the American Company under the terms of the Licensee Contract. A repeater of this type was installed in Houston in June 1917.

No. 149.

"Map of United States Showing Range of Transmission from Houston with and Without the Use of Telephone Repeaters."

This exhibit is a map of the United States showing the area of satisfactory telephone transmission radiating from Houston before the introduction of the telephone repeater and the area of such transmission after the introduction of the repeater. The exhibit shows that before the repeater was installed in the Houston Exchange a person in Houston could carry on a satisfactory communication by telephone with persons in Louisiana, Mississippi and Arkansas, the Western half of Alabama, Tennessee and Kentucky, the extreme southern part of Illinois, the southern part of Missouri, the eastern half of Kansas and Oklahoma, and the greater part of Texas, excepting the extreme western part. After the repeater was installed the exhibit shows that a person in Houston

may satisfactorily communicate over the telephone with another person at any point anywhere in the United States.

No. 150 & 151.

"Photographs of 'Cable Bug' or Scobicia Declivis."

These exhibits present illustrations of the details to which the Research & Development Engineering Department of the American Company assists the Southwestern Company with problems arising in its territory. The cable bug attacked the aerial cables in Texas and the Southwestern Company submitted the matter to the American Company for study of methods to prevent such destruction.

No. 152.

"Estimate of Savings Resulting from a Few of the Services Other Than Instrument Service."

1767 The following is an exact copy of this exhibit.

The Southwestern Telegraph & Telephone Co.,
Houston, Texas.

Oct. 1, 1919.

Conservative Estimate of Savings Resulting from a Few of the Services Other Than Instrument Services.

	Annual savings.
1. Improvement in cables by use of fine wire.....	\$104,500
2. Duct Saving due to improvement in Cables.....	17,300
3. New alloy for Cable Sheaths.....	2,200
4. Improvement in Switchboards Cords.....	14,100
Total	<u>\$138,100</u>
Number of stations Houston, Oct. 1, 1919.....	26,693
Evaluated saving per year per station for certain engineering services other than instrument service.....	5.18
Actual 4½% payment per station per year for all services other than instrument services.....	.55

In the above table nothing has been put down for the value of many other engineering services or the services of the

1. Legal Department.
2. Patent Department.
3. Value of Patent Protection.

1768 4. Comptrollers Department.

5. Insurance Department.

6. Financial and Administration Departments.

The service of these departments is of very great value to the Southwestern Telegraph & Telephone Company. It will be seen that the evaluated saving of a few of the engineering improvements due to the work of the General Engineering Staff of The American Telephone & Telegraph Company are nearly ten times as great as the payment to the American Telephone & Telegraph Company for services other than instrument services.

No. 153.

"American Telephone & Telegraph Company Specification #3850, Covering Substation Protector Installation."

This exhibit consists of a hand-book specification of 31 pages prepared by the Engineering Department of the American Company and consists of written matter and numerous diagrams and illustrations showing what it considers to be the most improved method for installing substation protectors.

No. 154.

"Photographs of Construction Work in the Houston Exchange Conforming to American Telephone & Telegraph Company Specifications."

This exhibit consists of nine photographs of construction work in different parts of Houston and diagrams taken from American Telephone & Telegraph Company hand-book construction 1769 specifications, showing where these specifications have actually been used in building the Telephone plant at Houston as follows:

Photograph A.—Construction at the corner of McGowan and Louisiana Streets, illustrating the use of Diagram 70 of American Telephone & Telegraph Company Specifications #3235.

Photograph B.—Construction work on Mt. Vernon Street east of West Main Street, illustrating the use of Diagram 75 of American Telephone & Telegraph Specifications #3235.

Photograph C.—Construction work on West Main Street, illustrating the use of diagram- Nos. 34 and 56 of American Telephone & Telegraph Specifications #3235.

Photograph D.—Cable construction on Dumble Avenue south of Harrisburg Blvd., illustrating the use of Diagrams 37 & 85 of American Telephone and Telegraph Specifications #3235.

Photograph E.—Construction work at the corner of Adams Street and Harrisburg Road, illustrating the use of Diagram 81 of the American Telephone & Telegraph Specification #3235.

1770 Photograph F.—Construction work on West Alabama Street east of Travis Street, illustrating the use of Diagrams 35 and 65 of American Telephone & Telegraph Specification #3235.

Photograph G.—Construction work between Walker & McKinney Avenues, Maplewood and Linwood, illustrating the use of Diagram 1 of American Telephone and Telegraph Specification #3235.

Photograph H.—Block Cable at the corner of Webster and Bagby Streets, illustrating the use of Diagrams 93 and 95 of American Telephone & Telegraph Specifications #3235.

Photograph I.—Block Cable work between Main and Fannin Streets, Texas and Capitol Avenues, illustrating the use of Diagram 93 of American Telephone & Telegraph Specification #3235.

No. 155.

"American Telephone & Telegraph Company Engineering Department Local Operating Text Book, Traffic Circular #113."

This exhibit consists of 147 pages of printed matter covering all features of local operating. It shows the details with which traffic problems have been studied by the American Company and the form in which the American Company presents the results of its studies. The following is a copy of the Table of Contents in this exhibit:

Table of Contents.

	No. of pages.
Subscribers' lines and central office.....	3
Telephone numbers	1
Apparatus used in establishing local multiple connections...	5
Answering calls.....	1
Establishing local multiple connections	2
Apparatus used in establishing call circuit trunk connections..	2
Establishing call circuit trunk connections.....	1
Apparatus used in establishing tandem trunk connections..	2
Establishing tandem trunk connections.....	1
Apparatus used in establishing ring-down trunk and built-up connections	2
Establishing ring-down trunk connections	2
Establishing built-up connections—first trunk used a ring-down trunk.....	2
Establishing built-up connections, first trunk used a call circuit trunk	1
Classes of service	3

	No. of pages.
A-B Toll calls	3
Two-number toll board calls	2
Long Distance calls	1
One-light disconnect signals	1
Busy Reports (No audible busy signal).....	2
Busy Reports (Audible busy signal).....	3
1772 Completing busy calls	2
Out of order reports.....	2
Completing out of order calls.....	2
Slow answer calls (No audible ringing signal).....	2
Slow answer calls (Audible ringing signal).....	2
Completing don't answer calls.....	2
Delayed calls (No audible ringing signal).....	3
Delayed calls (Audible ringing signal).....	3
Completing delayed calls.....	2
Flashing supervisory signals (No audible ringing signal)...	2
Flas-ing supervisory signals (Audible ringing signal).....	2
Canceled and abandoned calls (No audible ringing sig.)...	1
Canceled and abandoned calls (Audible ringing signal)....	1
Multiple marking calls.....	4
Reverting calls	1
Organization	2
Calls for Official lines	2
Emergency calls	2
Telegram calls	1
Restoring connections	3
Wrong number calls	2
Double connections	2
"Bell rang" reports	1
Information calls	1
Rural line calls	1
Equipment trouble	2
1773 Service criticisms	1
Traffic record—peg count (No audible ringing signal)	1
Traffic record—peg count (Audible ringing signal).....	1
Miscellaneous conditions	2
Use of phrases	7
Writing tickets	3
General regulations for operators	1
Special instructions for night operators	1
Appendix—Outline of Junior Operators' instructions.....	7

No. 156.

"Titles of some of the Circular Letters and Specifications which the American Telephone and Telegraph Company Have Prepared for the Associated Companies, Copies of which have been Received by the Southwestern Company."

This exhibit is a pamphlet of 29 pages showing the titles of various circular letters and specifications prepared by the American Com-

pany covering all phases of the Telephone plant construction, maintenance, and operation. On pages 1 to 18 inclusive is a list of 469 different circular letters each covering a different subject. On pages 19 to 29 inclusive is a list of 248 specifications, each covering a different subject. These circular letters and specifications relate to central office equipment, outside plant, substation apparatus, telephone buildings, underground construction, private branch exchanges, maintenance, transmission, operating methods, etc.

1774

No. 157.

"1918 National Electrical Code Published by the National Board of Fire Underwriters."

This exhibit gives the electrical code established by the National Board of Fire Underwriters, and is an example of a National problem affecting the Southwestern Company, in the consideration and solving of which problem the American Company's engineers represent the Southwestern Company under the terms of the licensee arrangement.

This exhibit was presented to show this type of work.

No. 158.

"Book, a Preliminary Report Prepared by the American Committee on Electrolysis."

This exhibit is a report on electrolysis submitted by a National Committee of engineers, on which committee the engineers of the American Company under the terms of the licensee arrangement represented the Southwestern Company.

No. 159.

"American Telephone & Telegraph Company Specifications, #3636, for Crossings of Telephone Circuits Over Steam Railroad Right of Way."

This exhibit, consisting of ten pages of printed matter, was prepared and issued by the American Company and deals with the subject mentioned in the title.

No. 160.

"United States Bureau of Standards' Circular #54, National Electrical Safety Code."

1775 This exhibit is a circular of 323 pages giving the result of many conferences between experts representing the Bureau of Standards, various electric light interests, and various telephone and telegraph interests throughout the United States.

No. 161.

"Partial List of Specific Work Done on Problems for the Southwestern Telegraph & Telephone Company by the General Engineering Staff of the American Telephone & Telegraph Company."

This exhibit, consisting of 15 pages of typewritten matter presents a list of some of the engineering construction, maintenance and operating problems relating to the Houston Exchange and other exchanges of the Southwestern Company in which the American Company gave advice and assistance to the Southwestern Company. The following is a copy of pages 1, 2, 6, 8, 10 and 13 of this exhibit: These pages illustrate the nature and importance of some of the specific problems.

Fundamental Plans.

Houston.

A fundamental plan is a guide to future construction work. It is a carefully worked out forecast of what the telephone conditions will be in fifteen or twenty years. It is, therefore, important to secure high grade engineering talent in working out such plans. In this we have the assistance of the experts of the American Telephone & Telegraph Company. The foundation of a fundamental plan is a commercial survey. Two commercial surveys have 1776 been made for the City of Houston, Texas, in recent years.

In 1911, a commercial survey was made for Houston and surrounding suburban territory to serve as the basis for a fundamental plan (ultimate 1926). The direction and character of development of Houston was peculiarly uncertain at this period on account of changing conditions affected by the Ship Canal. For this reason, when conditions became somewhat more clearly established, a new commercial survey was made in 1914 as a basis for another fundamental plan (ultimate 1929).

Engineers from the General Engineering Staff advised, co-operated and assisted in both of these commercial surveys. All told, the Staff engineers devoted the following number of days in Houston to this work:

Mr. C. H. Arnold.....	4 days
Mr. C. Wallace.....	38 days
Mr. A. E. Plumer.....	123 days
Mr. W. G. Holt.....	100 days
Mr. R. R. Copp.....	43 days

308 days

In addition to this time actually spent at Houston, a considerable amount of time was devoted by the Staff engineers to the consideration, at New York and Dallas, of certain details of the Houston surveys.

The following fundamental plans have been made for Houston, Texas.

1777

Date of study.	Date of ultimate.	Ultimate—		
		Lines.	Stations.	Population.
1904	1920	5,400	7,700	77,000
1906	1920	26,600	35,000	175,000
1912	1926	24,000	31,324	197,000
1915	1929	33,299	50,749	245,000

The 1904, 1906 and 1912 plans were made entirely by the General Engineering Staff. The 1915 plan was made by the Southwestern Company. The Staff engineers reviewed the results of this plan and approved it.

Of the total telephone plant now in Houston, about 50% has been placed in accordance with fundamental plans or a total of about \$3,000,000.00. It is estimated that by 1929, we will have spent an additional \$2,500,000.00 for telephone plant in Houston in accordance with the fundamental plan.

Buildings and Central Office Equipment.

Houston.

When the Preston, Hadley and Taylor Buildings were built in Houston, the plans were submitted to the General Staff for their criticism and comment. They were carefully reviewed from every standpoint before the work was started. Inasmuch as these buildings represent an investment of some \$400,000.00, the importance of reviewing the plans before they were erected is apparent.

The General Staff worked with the Southwestern Company 1778 in the preparation of the Central Office equipment specifications for the Preston and Hadley exchanges. They furnished certain standards from which these specifications were prepared and were of assistance in engineering this equipment which represents an investment of some \$800,000.00.

We have more or less trouble due to moisture in our Houston Central Office and have taken up with the General Staff, methods of remedying the trouble. They have advised regarding moisture-proof plug shelves and moisture-proof switchboards cable at Houston.

On account of the large number of extremely long lines connected with the Houston Office, much difficulty was experienced with the operation of the circuits. At the request of the Southwestern Company, the General Staff made a careful study of the situation and designed long line equipment to overcome the difficulties and also a method of signalling on these long lines.

General.

The Southwestern Telegraph & Telephone Company has received assistance from the General Staff on a great many matters relating

to central office equipment and buildings. It is in this field of engineering work that the General Staff have made notable progress in the matter of standardization. Many circuits and types of switchboards have been tried out by the General Staff and the results of these investigations have been made available to the Southwestern Company. There is a frequent interchange of correspondence between the companies on this subject and many personal conferences. Some of the typical subjects discussed from which some idea may be gained of their range and importance are listed below:

Gave specific advice as to the best method of lighting operating rooms and also a method of rear lighting for the switchboards.

Furnished handbook of telegraph circuits and information on printing telegraph apparatus.

Gave specific advice as to the wear permissible in switchboard jacks and advised regarding the sleeve gauge to be used in testing jacks.

Advised regarding inspection and maintenance tools for switchboard plugs and jacks.

Gave advice regarding gas engine troubles and advised regarding different types of gas engines and the handbooks issued for operating them.

Outside Plant.

General.

The files of the engineering department of the General Staff show that the Southwestern Company has requested advice from the General Staff in regard to very many specific matters relating to outside plant. Many of them have to do with the proper construction to employ to meet the peculiar conditions of a specific case. In other instances the question involved concerned the application of standard arrangements to conditions more or less general to the Southwestern Company territory, and in such cases information given in regard to a specific case also applied to a considerable number of other similar cases. Below are given a few typical cases of advice in regard to outside plant matters given the Southwestern Company.

Gave specific advice with regard to the preservation of poles.

Gave specific advice relative cypress poles and their treatment.

Furnished information regarding inspection of creosoted material.

Gave specific advice regarding the samples of creosote for application to pole butts.

Inspected creosoted pole lines in Texas and advised concerning same.

Furnished complete information regarding analysis of dead oil of coal tar for treatment of poles.

Gave specific advice and information regarding open tank treatment for poles.

Furnished specific advice regarding butt treatment of poles and the general results of such treatment.

1781 Advised concerning creosoted pine poles vs. Cedar poles.

Advised regarding samples of pothead wire.

Furnished information regarding life of galvanized iron wire on the Gulf Coast.

Advised concerning enameled distributing frame wire.

Gave specific advice regarding new type #22 gauge aerial cable.

Furnished at various times, upon request, much detailed information regarding conditions under which joint use of poles could be entered into with electric light companies.

Advised regarding use of #8 soft copper wire in joint use construction.

Protection of Life and Property.

Houston.

The Insurance Department of the General Staff has reviewed 35 of our semi-annual maintenance inspection reports of the three Central Office Buildings in Houston between 1911 and 1919, with a view of reducing the fire risk.

The Insurance Department of the General Staff has recently succeeded in getting the State Insurance Commission of Texas to recognize the fairness of their request for substantial rate reduction in telephone properties in Texas. This has resulted in a saving of about 33% in insurance premiums for the three exchange buildings in Houston.

1782 The Insurance Department of the General Staff has sent its own experts to Houston to inspect our Preston building three times, Hadley building four times and Taylor building three times during the years 1916, 1919 from an insurance standpoint, and made recommendations for improving the risk and further reducing the insurance rates.

Advised concerning a form of contract and concerning the type of protection where signaling lines of private power lines are connected to our telephone plant at Houston.

General.

The General Staff has furnished the Southwestern Company a great deal of information on this important subject. They have made studies of protective devices and methods used throughout the United States and have made the results of these studies available to the Southwestern Company. A partial list of the subjects covered is as follows:

The Insurance Department of the General Staff has sent its experts over the territory of the Southwestern System to inspect the various Central Office Buildings and has made many written reports and suggestions in regard thereto.

They have reviewed the semi-annual inspection reports we make with a view of reducing insurance premiums on all the central office buildings we own.

1783 They have studied proposed building plans with a view of designing the buildings so that a minimum fire risk would be run and the insurance kept to a minimum.

Gave specific advice on the question of installing tarpaulins for switchboards in small offices.

Gave information regarding the National Electrical Safety Code, United States Bureau of Standards, discussed safety appliances and instructions for employees.

Analyzed accidents to operators and methods to avoid same.

Traffic and Operating.

Houston.

Mr. Christensen of the General Staff, visited Houston studying service observing. He is a specialist in this line of work and gave our people the benefit of his experience with respect to local conditions at Houston. The object of these studies is to give an exact and comprehensive picture of the grade of service being rendered so that we may observe from time to time exactly what grade of service we are rendering the public, with a view of taking steps to improving it whenever it shows a tendency to fall below standard.

Mr. Allen, a representative of the General Staff, visited
1784 Houston going over the details of the method of making peg counts and the equipment necessary for same, giving advice and information to our people in regard to many points upon which questions had arisen. The peg count, which is a record of the number of calls handled by the operators, is taken about once a month and is important in that it is the foundation upon which our switchboards are engineered and is a means by which we determine the number of operators required at the switchboards to handle the calls.

Another representative, Mr. R. E. Walker, of the General Staff visited Houston, giving advice in regard to wages and working conditions of operating employees. Experience in this regard elsewhere is of valuable assistance to the Southwestern Company.

The General Staff has made a study of service standards for Houston and has made valuable suggestions in regard thereto, to the Southwestern Company.

General.

It is quite important to develop uniform practices in operating methods in the various cities. The services of the General Staff have been particularly valuable in this respect in that they furnish the Southwestern Company the results of numerous studies of different methods throughout the United States and have made suggestions relative to changes that would improve the service

1785 and also reduce operating cost. Some of the subjects on which they have advised the Southwestern Company are given below:

Furnished complete information and data regarding proper operating loads which could be satisfactorily handled by operators of various degrees of experience.

Advised regarding "A" operator ticket forms.

Gave method of operating rural magneto lines on #1, #8 and #105 switchboards.

Advised regarding standard operation of #8 switchboards.

Outlined routine for handling service criticisms received at Central office.

Transmission.

Houston.

The Engineers of the General Staff in co-operation with the engineers of the Southwestern Company made a transmission study for Houston which demonstrated that it would be possible to extend the use of fine wires in trunk cables and subscribers' cables which resulted in considerable saving in annual costs.

The General Staff has furnished the Southwestern Company complete information on the transmission efficiency of various 1786 types of circuits and apparatus. These data have been of fundamental value in the design and construction of the telephone plant at Houston, so as to obtain satisfactory transmission in the best and most economical manner.

Furnish drawings and necessary information for the repeater installation at Houston.

General.

Under the heading of transmission comes all questions concerning the loudness and clearness of speech transmission. The study of the different parts of the Telephone plant with respect to their effect on the transmission of speech is a valuable service rendered by the General Staff to the Southwestern Company. This work has developed many things of importance. Some of these matters on which the General Staff has advised the Southwestern Company are cited below:

Advised regarding general type and use of coils, method of installation and general practice to be followed in loading open wire and phantom circuits.

Experts of the Engineering Department of the General Staff have furnished a great deal of specific advice and information with regard to the loading of trunk cables in the larger cities. This advice covered every phase of the problem, such as specific coils to be 1787 used, proper spacing of coils, size of manholes, size of loading pots, methods and material to be used in installation, etc.

Furnished complete information with regard to the use, installation, maintenance, testing and termination of duplex cable; also as to the size and combinations of conductors and plans for its future use.

Advised regarding trouble from lighting on high dielectric cables entering through iron pipe.

Furnished detailed advice on the subject of inductive interference from power circuits and the design of transposition schemes to eliminate same. Several instruments for use in determining the amount of interference, its components, etc., have been designed and have been purchased by the Southwestern Company.

Furnished the Southwestern Company 6,000 to 8,000 transmitters, especially designed for use on long subscribers' lines where good transmission is difficult to obtain.

No. 162.

"Partial List of Letters Received from the American Telephone & Telegraph Company Bearing on Special Services Rendered to the Southwestern Telegraph & Telephone Company."

This exhibit consists of 32 pages of typewritten matter. It is a list of various letters selected from the files of the Chief Engineer of the Southwestern Company, showing that a large volume of correspondence is continually carried on between the engineers 1788 of the American Company and the engineers of the Southwestern Company relating to problems in the territory of the Southwestern Company. There are a total of 465 letters mentioned in this exhibit under the following classifications:

Subject.	Pages No.	Total No. of letters.
Fundamental Plans	1	13
Buildings & Central Office equipment....	2-10	124
Substation equipment	11-13	40
Outside Plant Matters	14-19	97
Protection of Life and Property.....	20-23	50
Traffic Engineering & Operating Methods.	24, 25	33
Transmission	26-32	108
Total	32	465

Some of the letters selected from this exhibit are as follows:

Date.	From officials of A. T. & T. Co.	To officials of S. W. T. & T. Co.	Subject-matter.
Jan. 22, 1915.....	Engineer of Traffic	Chief Engineer	Comments on Houston Fundamental Plan.
Apr. 15, 1915.....	Engineer of Plant	"	Use of Moisture-proof Switch-board Cable at Preston Office, Houston.
Jan. 11, 1915.....	"	"	Moisture-proof Switchboard Plug Shells, Houston.
Feb. 1, 1917.....	Equipment Engineer	Act. Chief Engr.	Designation, Maintenance, delivery & installation of a new peg count, Register key.
Apr. 24, 1917.....	W. V. Reid	Transmission and Protection Engr.	Regarding delivery of Material for Repeater sets at Houston.
Mar. 6, 1917.....	Engineer of Plant	Chief Engineer	Commenting on Plans for a new office building at Houston.
1789			
Jan. 15, 1918.....	Engineer of Plant	Chief Engineer	Plan for New Central office Building at Houston.
July 2, 1919.....	R. E. Walker	General Supt. Traffic	Regarding Operating loads to be applied at Houston.
June 26, 1917.....	Engineer of Plant	Chief Engineer	Use of #20 Instrument Wire.
July 29, 1918.....	Act. Chief Engr.	Act. Chief Engr.	Loud-speaking pay station equipment for Houston.
June 8, 1917.....	Engineer of Plant	Act. Chief Engr.	Investigating trouble caused by cable rings cutting the sheath of aerial cables.
Nov. 28, 1917.....	"	"	Advising of Proposed visit of Mr. J. W. Campbell to the Southwestern Territory to discuss Development of Standard Plant Engineering Records.

Date.	From officials of A. T. & T. Co.	To officials of S. W. T. & T. Co.	Subject-matter.
Jan. 10, 1919.....	J. N. Kirk	Chief Engineer	Contemplated Visit of representative from A. T. & T. Co., to discuss New Specifi- cations covering House Cable.
Sept. 27, 1919.....	Outside Plant Eng.	"	Development of Pole Hole Boring machine.
Nov. 16, 1916.....	Chief Engineer	"	Discussing National Electrical Safety Code.
May 15, 1918.....	"	"	Fire protection and Prevention in connec- tion with Telephone Buildings.
Sept. 27, 1918.....	Act. Chief Engr.	"	Describing a Door-Check with a fusible link, to be used in connection with Fire protection devices, in Telephone Build- ings.
June 17, 1919.....	"	"	Trolley and Tree guards for Protection of Aerial Cables.
Mar. 6, 1917.....	Chief Engineer	"	New Building for Harrisburg Office at Houston.
Sept. 17, 1919.....	Engineer of Traffic	"	Relief and Hours for Supervisors at Hous- ton.
May 12, 1915.....	Engineer of Plant	"	Transmission Studies—Texas Cities.
Nov. 6, 1915.....	"	"	Defective Loading coils in Texas.
1790			
Aug. 29, 1916.....	Engineer of Plant	Chief Engineer	Repeaters at Houston, Texas.
Feb. 4, 1919.....	W. H. Harden	Transmission & Protection Engr.	Visit of representative from A. T. & T. Co. in interest of Transmission Main- tenance work.
Apr. 11, 1919.....	Chief Engineer	Chief Engineer	Advice relative to transmission measuring apparatus.
Oct. 24, 1919.....	"	"	Information as to use of 22 and 24 Gauge Cable in Exchange Areas.

1791

PLAINTIFF'S EXHIBIT No. 163.

The S. W. T. & T. Co., Houston Exchange.

Houston Industries.

Study of Returns Earned.

C. A. Gates, Witness.

This exhibit is based on the 1915 report of the Bureau of the Census and shows the net per cent return earned by the various industries in Houston.

The exhibit shows that the per cent return varies all the way from 8.08 per cent earned by the planing-mill products industry, to 157.28% earned by the newspaper and periodical publishing business. The average return to all the industries in Houston is shown to be 15.36 per cent.

The exhibit shows also the net earnings of the National Banks in the principal cities of Texas, the banks in Houston earning 9% and the banks as a whole in Texas earning 14.41%.

1792 Mr. J. D. Frank: If your Honor please, there are two or three little matters that we want to straighten out this morning, called for by pleadings, First: I would like to offer in evidence Sections 990 and 991 of the Revised Code of Ordinances of the City of Houston. I will just read those and the Reporter can copy them in the records later on.

Sections 990 reads as follows:

"Sec. 990. Rates of charges.—Any person firm, corporation or receiver operating or owning telephone lines and exchanges within the City of Houston, Harris County, Texas, engaged in the business of furnishing telephone connections and services to the citizens of said City of Houston, shall charge not exceeding the following rates, to wit:

"Rate One: Telephone lines and exchanges having Three Thousand (3,000) or less paying subscribers within the limits of the City of Houston shall have the right to charge, for business or office connection, Three Dollars, (\$3.00) per month, for residence, Two Dollars (\$2.00) per month.

"Party Lines: Business or office, Two Dollars (\$2.00) per month: Residence, One Dollar (\$1.00) per month.

1793 "Rate Two: Telephone lines and exchanges having in excess of Three Thousand (3,000) paying subscribers within the limits of the City of Houston shall have the right to charge, for business or office connections, Five Dollars (\$5.00) per month: For residence, Two Dollars (\$2.00) per month."

"Party Lines: Business or office, Three Dollars (\$3.00) per month: For residences, One & 50/100 Dollars (\$1.50) per month.

Provided that the rates above fixed are fixed for a reasonably efficient service, and in the event the service is not reasonably efficient, the subscriber or customer can satisfy his bill and the requirements of this section by paying or tendering to the person, firm, corporation or receiver operating or owning the telephone lines such proportion of the rate fixed by law for the service as the service actually furnished bears to a reasonably efficient service.

"In the event the service is not reasonably efficient, and the customer has paid in advance for the service at the rate fixed by this section, he can deduct an amount proportionate to the deficiency in the service from the rate for the next month, and the person, firm, corporation or receiver operating or owning the telephone lines shall be bound in all cases to receive said sum of money and continue to furnish the service: provided that the amount of money paid 1794 by the customer is proportionate to the service rendered. (Nov. 22, 1909, Ord. Bk. 3, p. 541, Sec 1.)"

Mr. J. D. Frank: Section 991 is as follows:

"Sec. 991. Penalty.—Any person, firm corporation or receiver, operating or owning telephone lines or exchanges within the limits of the City of Houston, Harris County, Texas, engaged in the business of furnishing telephonic connections and service to the Citizens of said City of Houston, or any agent, manager or superintendent thereof, who shall charge any greater rates or tolls for the services herein mentioned, than those hereinbefore fixed, or who shall refuse to continue to furnish the service because the customer fails to pay a greater amount for the telephone service than is fixed by Section 990, or than is payable under the next preceeding section for the character of service rendered in the particular case, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than Twenty-five dollars (\$25.00) and not exceeding One Hundred Dollars (\$100.00) for each offense, and in case of failure or refusal to further furnish telephone service to the customer or subscriber, it shall be a separate offense for each day that there is failure or refusal to furnish the service. (Id.)"

Mr. J. D. Frank: Those are the ordinances which we are attempting to join.

1795 Mr. A. E. SCOTT, a witness for the complainant, was sworn and testified as follows:

Cross-examination.

(Questions by Mr. Howard:)

I do not set up the per cent value of the property, the engineer handles that part of it. That would not appear in the books. It is

my understanding that this item of \$318,367.54 was determined by the President and Auditor of the Company at that time, 1901. Just what their basis was for making this division on the books I don't know. I do not believe that it was an arbitrary amount, but so far as I am concerned it was given to me as an arbitrary amount, in 1901. The President may have been correct in naming that amount. That was undertaken to be made by dividing up the cost of all the exchanges prior to that time. I have not been able to find out exactly how they did it.

We start off with that value of \$318,356.54, and in 1902 we have a value of \$388,237.19. We arrived at that in this manner,—as the additions would be made at Houston they would be charged to Houston, all the gross additions. As the plant was taken down or removed the plant account would be credited with the amount, 1796 and this \$388,000.00, the difference between it and the \$318,000.00 represents the additions to Houston during the prior year 1902. That represents gross additions during the year.

“Q. In speaking of additions, are you distinguishing between additions and replacements and repairs?”

“A. Replacements are treated as “in and outs” as we describe them. That is, if you have a large property to replace, you will charge into your plant account the total cost of the new property which is put in, and remove from your plant account——”

“Q. I am trying not to theorize.”

“A. That isn't theory.”

“Q. Not to get into an argument. Take for the year 1902, do I understand you to say there were some repairs and replacements made, and also some extensions to the plant, do your books show that?”

“A. Yes, sir. The repairs would not be involved in this statement at all. That would be charged to maintenance. That is not included in this figure at all. Repair is a maintenance, or expense item and would be charged to expense and that is the last of it.”

I have that item of \$70,000.00 divided showing so much added to each class of plant, so much central office, so much pole, so much wire and so on. I have no way of showing whether that \$70,000.00 was used in taking down an old pole and replacing a new one, or whether it was used in making extensions, new extensions to the plant. I couldn't give that kind of information accurately prior to 1915. In 1914 we installed what we call “Departmental or Administrative Accounting.” From that time on we could give that information very well. For instance, if along here on Fannin Street there were fifteen or twenty poles taken down and replaced with new poles that would be charged upon the books to the “Pole account.” We would call that a gross addition. That might be either a new extension or a replacement, and our records would not indicate that. It would require an analysis to go back of that and find out whether we took down 15 poles at that place and put up new ones, or whether we actually extended——

"Q. (Interrupting.) If you took down 10 or 15 poles on Fannin and replaced them with new ones, so far as your books would show you couldn't tell whether that was a replacement, or whether those poles were used in extending the plant out to Brunner, or somewhere out that way?"

"A. Not in the early years."

Prior to 1914 we were not keeping the kind of records we now keep, by exchanges, and would not be able to get that information like we can now.

"Q. Then in this set up of \$4,810,000.00 that total that 1798 you arrive at, after having started in 1901 with only \$318,000.00 your books will not reflect whether or not, or to what extent, that money has been accumulating there, added to this account was used in replacing poles or equipment, and to what extent it was used in putting in additions to the plant which was intended to serve more people and enlarge the plant?"

"A. Well, the fact that the plant is increasing—the total cost is increasing from year to year would be a certain indication——"

"Q. We are assuming——"

"A. I would not be able to give you how much each year."

"Q. What I want to get at is this, whether in this set up that you set up as the book value of this plant, whether from those books, not from this statement, whether or not it is possible to determine whether or not all the money that has been spent is additions to plant which enlarge the service, or whether some part of it has been used in replacing parts of the plant that have worn out?"

"A. If the property which was added to replace property taken down, was of greater cost than that which was taken down, there would be no amount included in these figures for that replacement. This would only take up additional cost due to changes in price, or

a better class of plant put up to replace plant taken down.
1799 If we had a thirty foot pole at a corner and took that down,—suppose it was valued at \$15.00, and we replaced it with a twenty foot pole worth \$10.00, that would be reflected in this account as a reduction in our plant account \$5.00."

"Q. Then, in other words, you haven't charged into this anything used in replacements?"

"A. Nothing for replacements, unless the property had a greater cost than the property which it replaced."

"Q. Then you would carry into this set up only the additional cost?"

"A. That is right."

Redirect examination.

(Questions by Mr. J. D. Frank:)

I testified that the interest on this \$943,000.00 bonded indebtedness was paid out of operating expense. I do not mean that it is paid out of operating expenses in Houston each year, because you

can't pay interest out of operating expenses if your operating expenses are greater than your income, and that is the condition at Houston, where we are not making any return. Our operating expenses are greater than the gross income we have here. What I meant was that after we had paid all of the operating expenses for the State as a whole, we took out of what was left enough money to pay the interest on this bonded indebtedness. And that interest payment was not made out of the operating revenue derived from the Houston Exchange.

Counsel has asked me about the reserve for depreciation in former years. If we had laid up an adequate reserve for depreciation we would not have been able to pay the dividend which have been paid, even though those dividends were only 2% or 2½%, whatever it was for the lowest year. If we had laid up an adequate reserve for depreciation we wouldn't have had that much dividend. The Company in the past has not been putting aside an adequate reserve for depreciation, it has not been able to lay aside any reserve in Houston for a number of years.

The Southwestern Telegraph & Telephone Company has been paying 6% interest on these notes issued by them, but the Southwestern could not go out into the open market and secure this money at 6%. It is able to borrow at 6% due to its connection with the American Telephone & Telegraph Company, and it borrows from them. With the exception of the \$943,000.00 bonded debt all the indebtedness of this company is owed to the American Telephone & Telegraph Company.

The reason the Southwestern Telegraph & Telephone Company can borrow money from the American Telephone & Telegraph Company at 6% when it cannot go and get this money in the open market from anyone else at that rate is because the Southwestern Telegraph & Telephone Company is simply one of many companies making up the Bell System. The Bell system operated throughout the United States borrows from fifty to a hundred million dollars a year. It can probably do a better financing job than what a local company could do, and is able to get money at a per cent which the local company could not do. However, that does not enter into the proposition so very much as under the agreement that the Southwestern Company operates under the American Telephone & Telegraph Company has agreed to finance the local company, and that is why they are able to get the 6% money, even though they are not able to go out in the open market and borrow it. This company issues its notes payable to the American Telephone & Telegraph Company. It has done it in various ways. In some cases it has borrowed it by notes payable to the American Telephone & Telegraph Company, and in other cases by other means. The American Telephone & Telegraph Company does not discount the notes which have been given by the Southwestern Company to them. None of the notes have been discounted. They have gotten dollar for dollar on the face value of the notes. There is a contract existing between the Southwestern Telegraph & Telephone Company and

this parent company by which the parent company is to finance this company which operates this exchange in Houston. The parent company does not require any security, it has no security
1802 other than the fact that they own the stock of the company. Just simply notes which are signed by the officials of the Southwestern Telegraph & Telephone Company.

1803 In my position as statistician I have access to the books of the Company showing revenues and expenses. I have prepared an exhibit showing a summary of the revenues and expenses in connection with the operation of the Houston Exchange for the years 1915 to 1919 inclusive.

Mr. J. D. Frank: We desire to offer that in evidence as Plaintiff's Exhibit No. 42.

Thereupon the document was received in evidence and marked Plaintiff's Exhibit No. 42, and is as follows:

(Continued.)

(See next page for Exhibit No. 42.)

A. E. Scott, Witness.

The Southwestern Telegraph & Telephone Company.

Houston, Texas.

Summary of Revenues and Expenses.

	Year 1916.	Year 1917.	Year 1918.	Year 1919.	7 months ended Aug. 31, '19 (annual basis).	4 months ended Dec. 31, '19 (annual basis).
Revenues:						
Exchange Rev.	\$615,033	\$664,969	\$700,439	\$880,439	\$961,650	\$776,652
Toll Revenues	70,880	82,818	94,528	121,302	119,870	129,008
Miscel. Rev.	13,165	19,263	21,984	22,472	21,240	24,598
Total Revenues	699,078	767,050	816,951	1,024,213	1,102,760	930,258
Expenses:						
Maintenance Exp.	82,002	96,827	99,362	129,956	116,454	156,174
Traffic Expenses	214,426	258,984	329,440	418,005	388,129	490,037
Commercial Exp.	65,821	65,340	69,867	84,075	82,438	87,959
General Exp.	53,531	39,004	51,527	48,641	47,372	54,072
Rights, Privileges, etc.	29,944	32,677	34,414	43,528	47,139	39,108
Uncollectibles	9,750	9,342	12,724	15,084	15,964	14,196
Taxes	73,564	87,607	103,810	123,462	118,466	134,674
Rent Deductions	3,084	2,818	3,798	3,562	3,412	3,842
Total Expenses	542,122	592,599	704,942	866,313	819,374	980,062
Balance Net Income before deducting De-						
preciation	156,956	174,451	112,009	157,900	283,386	49,804*
Depreciation	293,718	306,732	313,800	359,999	359,999	359,999
Balance Net Loss	136,762*	132,281*	201,791*	202,099*	76,613*	409,803*

*Red in copy.

1805 The total revenues for the year 1916 were \$699,078.00.

The total expenses were, not including depreciation, \$542,122.00. By the term "not including depreciation," I mean the annual reserve for depreciation. Deducting the expenses from the revenues, we get a balance of net income for depreciation and return of \$156,956.00; deducting depreciation of \$293,718.00, we have a balance, net loss of \$136,762.00 for the year 1916. Now, with reference to the amount of depreciation I get that figure thus: The engineers gave me an estimate of the reproduction costs now of the property for the year 1916, and gave me an actuated rate of depreciation of 6.3 per cent; applying the 6.3 per cent to the estimate of reproduction less depreciation \$4,662,190.00 I get this depreciation figure, \$293,718.00. That is for the year 1916.

In 1917 our total revenues were \$767,050.00. That is an increase of about \$68,000.00. Total expenses for the year \$592,599.00, which is an increase of about \$50,000.00. Deducting the expenses from the revenues, we get a balance net income for depreciation and reserve of \$174,451.00. Deducting depreciation, the amount of \$306,732.00, we have a balance, net loss for the year 1917, of \$132,281.00. That depreciation figure for 1917 was on the basis of 6.5 plus per cent of \$4,694,000.00. That was also furnished me by the engineers.

In the year 1918, the total revenues were \$816,951.00, and that is an increase of about \$117,000.00 over 1916. The total expenses were \$704,942.00, and that is an increase of about \$162,000.00 in expenses, over 1916. Deducting the expenses from the revenue, we have a balance net income before deducting the depreciation of \$112,000.00. That is about 5% of the estimate of reproduction cost new, the depreciation \$313,800.00. That is based on the rate 6.533 per cent on the valuation of reproduction by the engineers of \$803,309.00.

The year 1919, the total revenues were \$1,024,213.00. During the year 1919 we had some rates higher than at other times, we had from Februray 1st to August 31st, we had the rates put in by the postmaster General; I have taken those increased rates and revenues in those figures. Total expenses for the year were \$866,313 leaving a balance before deducting depreciation of \$157,900. That is about 24% of the reproduction cost new. Depreciation was \$359,999.00; that is a figure determined by Mr. Hoag, he has an exhibit, I think, showing that, it is based on a rate of 6.334 per cent. That leaves a balance, net loss for the year 1919, of \$202,099.00, that is, after I have set aside the proper amount of reserve for depreciation. During the seven months ending August 31st, they had the rates in effect which were put in by the postmaster general, that is, the \$3 and \$7.50 rate, I think those are the rates. That is the \$7.50 flat rate for business telephones and 3 for residence telephones, and then in addition to that we had measured service.

1807 I have taken the actual results from those seven months of operation with the increased rates, and have worked that out on the annual basis. The rates which are in effect at the present time are \$5.00 for business telephones and \$2.00 for residence tele-

phones. These computations which I am about to take up now are based on the higher rates. This is the total revenue for the seven months on annual basis, that is, \$1,102,760.00. The way I got that was to take the actual revenues for seven months, divide by seven and multiply by twelve. The total expenses for those seven months on an annual basis, were \$819,374.00, and deducting expenses from the revenues, we have a balance, net income, for depreciation and return of \$283,386.00. That is about 5% of the estimate of reproduction cost new, less depreciation. We only have 5% there for depreciation and return. Deducting depreciation, the same amount we used in the previous column was \$359,999.00, and we have a balance net loss for the year, or for seven months on annual basis, of \$76,613.00. Subsequent to these seven months by some legal proceeding we had to go back to our old rate, but I made a study of what our revenues and expenses were during the four months at the lower rate and what the revenues and expenses actually were during the four months. That is, during the last four months of 1919, we were operating under rates described by City Ordinance, \$5.00 for business telephones and \$2.00 for residence telephones. I

have made a computation of what the results would be on 1808 annual basis by taking the actual, effect of the last four months of 1919. I want to call your attention to the fact that the total exchange revenues were about 25% greater than the exchange revenue for 1916, I am making comparison there of the difference between what we are getting now and what we did get during those four months, then what we actually got in 1916. There was quite a considerable increase in revenue, and I want to show that the big part of it is not from our exchange revenue, but from toll revenue. The next item is toll revenue, \$129,008.00; that is an increase of about 80% from our tolls of 1916. Miscellaneous revenues, amounting to \$24,598.00; that compares with 1916, that is about 90% greater than 1916; so you will see that the big increase in revenue is not in exchange revenue, but in toll and miscellaneous, the percentage—the total revenues for the four months ending December 31st, are \$930,258.00 which is an increase of about 33% from 1916. Maintenance expense on these last four months of 1919 was \$156,174.00. Now, I don't think I need to read all of these, but traffic expense I call particular attention to, was \$490,037.00, that is an increase of 130% over what we had in 1916. Commercial expenses have increased about 33%; and our total expenses for these four months were \$980,062.00; that is an increase in expenses over 1916 of about 80%, as compared with an increase in total revenue of 33%—shows where our money has gone.

1809 Deducting the expenses from the revenues, instead of having a balance income for depreciation and return or for anything else, we have a loss of \$49,804.00. The operating expenses exceeded the revenues by \$49,804.00, before we made any allowance for depreciation. Then, if we had deducted our annual reserve for depreciation, or set aside the annual reserve for depreciation that should have been set aside the result would have been that we would have had a balance, net loss, \$409,803.00.

1810 Mr. A. E. Scott, who, having been previously sworn, was recalled by the complainant and testified as follows:

Direct examination.

(Questions by Mr. J. D. Frank:)

Exhibit No. 42 which was put in in the early part of this case is a summary of the revenues and expenses for the years 1916, '17, '18 and '19, and for two periods in 1919, the seven months when the high rates were in effect, and the four months after the rates were reduced. Mr. Lyndon's Exhibit No. 7 purports to be a revenue and expense statement for the year 1919. I have prepared a comparison of my exhibit No. 42 and Mr. Lyndon's exhibit No. 7.

Mr. J. D. Frank: We desire to offer that in evidence as Plaintiff's Exhibit No. 171.

(The statement was thereupon received in evidence, marked: "Plaintiff's Exhibit No. 171, witness A. E. Scott," which reads as follows:

(Here follows Plaintiff's Exhibit No. 171, marked page 1811.)

Comparison of Scott

	Scott Exhibit #42.
Exchange Service Revenues	880,439
Toll Service Revenues.....	121,302
Misc. Oper. Revenues.....	22,472
Total Revenues	1,024,212
Use of Property Rts., etc.....	49,828
Maintenance Expenses	129,956
Traffic Expenses	416,005
Commercial Expenses	84,076
General Expenses	48,641
Uncollectibles	16,004
Taxes	123,451
Other Deductions	3,561
Total Expense	866,312
Net Operating Revenues.....	157,901
Before deduct. deprecn.....	360,000
Balance Net Income.....	303,099†
Excess Revenue during 7 Mo.....	115,955
Balance Net Income.....	312,054†

*Includes switching charges in amount of \$10,762.77 and \$281.46 A. T. & T. Co.

†Red in copy.

PLAINTIFF'S EXHIBIT #171.

A. E. Scott.

The Southwestern Tel. & Tel. Co.

Houston Exchange.

Comparison of Scott Exhibit No. 42 and Lyndon Exhibit No. 7, Covering Revenues and Expenses.

Scott Exhibit #42.	Lyndon Ex. No. 7.		Lyndon Ex. No. 7.		Lyndon Ex. No. 7.		Lyndon Ex. No. 7.		Lyndon Ex. No. 7.	
	Basis of 100% tolls.	Increase over Ex. 42.	Basis of 25% tolls.	Increase over Ex. 42.	Basis of 35% tolls.	Increase over Ex. 42.	Basis of 50% tolls.	Increase over Ex. 42.	Basis of 75% tolls.	Increase over Ex. 42.
880,439	880,439	.....	880,439	.....	880,439	.....	880,439	.....	880,439	.....
121,302	442,156	320,654	121,302*	.....	166,405*	44,103	281,565*	110,262	341,622	320,520
22,472	22,472	.....	22,472	.....	22,472	.....	22,472	.....	22,472	.....
1,024,212	1,345,212	320,854	1,024,213	.....	1,988,216	44,103	1,134,475	110,262	1,264,733	320,520
49,828	12,900	30,628†	12,900	30,628†	18,900	30,628†	18,900	30,628†	12,900	30,628†
129,956	129,956	.....	121,246	8,710†	128,074	6,682†	125,616	4,140†	130,866	430
416,005	418,005	.....	386,695	31,310†	390,069	27,126†	397,121	20,874†	407,567	10,428†
84,076	84,076	.....	73,990	10,746†	74,768	9,312†	76,911	7,165†	80,492	2,934†
48,641	48,641	.....	14,886	33,756†	19,686	29,266†	26,137	22,504†	37,388	11,259†
16,004	16,004	.....	15,004	.....	15,004	.....	15,004	.....	15,084	.....
123,451	99,965	23,496†	99,965	23,496†	99,965	23,496†	99,965	23,496†	99,965	23,496†
3,561	3,561	.....	3,561	.....	3,561	.....	3,561	.....	3,561	.....
866,312	812,188	54,134†	727,667	188,645†	789,003	126,710†	757,505	108,207†	787,343	78,969†
157,901	522,679	374,976	296,546	136,645	322,714	170,012	376,970	219,069	457,390	299,429
360,000	136,320	223,680†	135,320	223,680†	136,320	232,680†	136,320	233,620†	136,320	233,680†
303,099†	396,559	598,668	160,886	263,323	193,394	394,493	240,650	442,749	321,070	523,169
115,955	115,955	.....	115,955	.....	115,955	.....	115,955	.....	115,955	.....
312,054†	280,604	398,658	44,371	363,326	76,429	394,498	124,695	442,749	206,115	523,169

146 A. T. & T. Co. Commissions in addition to the percentage of gross tolls.



1812 In Mr. Lyndon's Exhibit No. 7 he set up five different propositions. The first proposition is to credit to the exchange the entire originating toll business at the exchange, and to deduct from our $4\frac{1}{2}\%$ the amount, and to eliminate from our taxes the income tax, and also to use for depreciation the amount of depreciation which he showed in the last column of Page 1 of his Exhibit No. 2. In his other proposition we are to take a per cent of the toll and to allow a percentage of the so-called, what he called, "allocated charges" to the exchange. He set up four different propositions on the basis of 95% of the tolls; 35% of the tolls; 50% of the tolls and 75%. The effect of his computation in this first column here on the basis of 100% of the tolls is to include the entire originating toll business and credit it to the exchange and not allow to the exchange any of the expenses incident,—additional expenses incident to furnishing that service. In my Exhibit No. 42, in determining the expenses chargeable to Houston, I only considered expenses in connection with the operations at Houston, and there are many toll expenses incurred all over the State which are strictly applicable to them, and no part of such expenses have been included in my expense statement. Mr. Lyndon has not allocated to Houston this toll expense outside of Houston since he set up his 100% of the tolls for Houston; he has included no additional expense while adding all of the tolls to the credit of the exchange. Mr. Lyndon

1813 has added to the revenue for the local exchange \$320,854.00.

That is under the second item over to the left hand side there, toll service revenue. My Exhibit showed \$121,302.00 to the Houston Exchange and Mr. Lyndon put it in as \$442,156.00, by which he adds to the revenue for the local exchange \$320,854.00 and increases the total revenue for Houston by that amount.

The next item of charge is the amount allowed for the use of property rights, privileges, and so on. That is the amount we pay to the American Telephone & Telegraph Company under the license contract, the so-called $4\frac{1}{2}\%$ payment. I think Mr. Lyndon has explained in detail how he arrived at his amount of \$12,900.00. In other words, my Exhibit No. 42 showed a charge of \$43,528.00 for which he substituted \$12,900.00. That figure in red, \$30,628.00 represents the difference. That's the amount of expense which is not allowed in connection with the $4\frac{1}{2}\%$ payment. The next item in that column is \$23,496.00. That is the income tax which I had allocated to the exchange. It isn't exactly the amount which I have used, but it is the amount which Mr. Lyndon—why, it is the difference between the amount which Mr. Lyndon allows as Taxes and the total amount which I have charged to the exchange as taxes.

That figure of \$54,124.00 is the total of the two red figures above, the \$30,628.00 and the \$23,496.00. Adding this \$54,124.00, because that is a reduction in the expense, to the \$320,854.00 the increase in revenue, we get a result of \$374,978.00 which Mr. 1814 Lyndon has added to the revenue.

The next red figure is \$223,680.00 and is the difference between the amount of depreciation which is used in my original expense

statement, which has been determined by the engineers, and the amount which Mr. Lyndon said was proper on connection with his Exhibit No. 2. So, he cuts out \$223,680.00 of the annual reserve for depreciation as found by Mr. Hoag.

Mr. Lyndon, in his set up, has not allocated any part of the toll property out of Houston; in using my book figures he would have included the toll central office equipment at Houston, but no other toll property, because no other toll property is allocated to the exchange or charged to the exchange on the books. One very large item of expense on toll property outside of Houston is toll maintenance; it amounts to \$211,109.00 for the year 1919. Mr. Lyndon has not allocated to Houston any portion of that expense. He apparently is under the impression that we do charge to the exchange maintenance, toll maintenance outside of the exchange, but we do not do that.

While Mr. Kelsey was on the stand he stated that the toll maintenance in the toll district here was charged to Houston and said

that very often they had local linemen and repair men to 1815 run out here 40 or 50 miles to repair toll lines, and their salaries and expenses charged up to the local exchange.

That is not a fact; Mr. Kelsey apparently does not understand how we keep our books. If we have a man working here in Houston and he is sent out on a job of repairing toll lines, his salary and his expenses are not charged to the local exchange. The maintenance in connection with the toll lines is allocated to the toll district, or the toll line, or to the State as a whole, and no part is at any time charged to the exchange. I have records where a man has been sent out from Houston showing how his time was charged. I have some copies of daily time reports.

In order to explain the daily time report I will have to tell you what our technical methods are. "T" in our business designates toll, or means repairs; and "T-R" would mean toll repairs; and "R" without the "T" would mean that it is exchange repairs. Now, I have a time report here which shows three men,—that's a gang; one of the men is E. Carroll. On the 13th of April of 1920, he shows that he worked 2½ hours on 13-R work; that's repairs on lines. That was charged to Houston. He is a Houston man. He spent 2½ hours which was charged to 18-R, that's repairs of substation equipment, and he spent three hours on a custom work order, taking out some telephones in Houston, which was also charged to Houston. On April 15th they had some trouble on a toll line and this man Carroll was sent out on the job and spent 1816 his whole day soldering, I think, joints, starting in at Aldine and working up to 1 mile south of Westfield, toll circuit 390, Houston Division, Houston District. That time was charged to 13-T-R, and no part of that is chargeable to Houston. Now, the same plan is followed in connection with the toll maintenance expense; no part of any toll maintenance in connection with the toll lines being charged to an exchange. The toll, or the maintenance in connection with the Central Office equipment is charged to the exchange, and that is because of the fact that the work is so inti-

mately connected with the work on the exchange switch board that it would be difficult to separate it, and we have made allowance for that in allowing the 25% of the toll business to the exchange. That would probably amount to about \$2,000.00 at Houston a year.

"Q. Now, come back to this exhibit, Mr. Scott, and taking up the first column, where Mr. Lyndon has allocated to Houston 100% of the tolls, and has cut down the payments under the license contract to the amount of \$30,628.00, and has eliminated the income taxes of \$23,495.00 and has cut down the annual reserve for depreciation in a sum amounting to \$223,680.00. Then how much do you find that it would be necessary to increase the revenue here in order to earn a return of 8% on Mr. Hoag's set up?"

1817 "A. It would require an additional amount of \$240,383.00."

That is even including 100% of the tolls. The amount which Mr. Lyndon has arrived at after making the deduction of revenues, and the deductions from expenses, leaves a net revenue for the year of \$280,604.00, that is, just about 4% on Mr. Hoag's reproduction cost new, less depreciation value. That is without allocating any portion of the toll investment in Houston and putting in 100% of the toll receipts.

We have other expenses outside of Houston with reference to the toll properties other than maintenance. In every department we have toll expense. I might take as one example, it's not a department exactly, but take the item of taxes; in determining the amount of the gross receipts tax to be charged to Houston I figured 1½% on the amount of revenue which I had credited to the exchange, and that left—Mr. Lyndon has added \$320,854.00 to the revenue and the tax on that would be about \$5,000.00. That has not been included by Mr. Lyndon, and in our method of accounting would be considered as a tax in connection with the toll property. That is the gross receipts tax which we have to pay to the State, we have to pay to the State a gross receipt tax. He has made no allocation of that item to Houston; the amount which I have determined was based upon the revenue which I had credited to the exchange, and the balance of the tax was naturally in connection with the toll

1818 property.

We have to pay ad valorem taxes on toll property but Mr. Lyndon has not made any allocation to Houston for that, and when I made my set up I did not include any part of it. I will explain that by referring to my seven months' set up; take Harris County as an example,—the taxes, ad valorem taxes, for the year 1919 were \$22,114.00, and only 92%,—92.84% of the property in the State, or rather in Harris County, is in Houston, and therefore I only took 93% of the taxes paid in Harris County and charged it to Houston. That same thing prevails throughout the State of Texas and on toll property probably runs somewhere between one and two hundred thousand dollars. I haven't figured out just what it would be,

"Q. Now, take up Mr. Lyndon's exhibit No. 7, Mr. Scott, and tell us what he has excluded from the local exchange revenue?"

"A. You mean in connection with his later calculations?"

"Q. Yes."

"A. Mr. Lyndon, on Page 3, shows that he has considered as allocated items, or general expense items, \$119,357.00 which he has deducted from our expenses."

Mr. Howard: There is no comparison of that on this exhibit, is there, Mr. Scott,—on this exhibit that you just introduced in evidence?

1819 Mr. Scott: Yes, I show the application of it.

Mr. J. D. Frank: We will take that up further and we will explain just what he has excluded.

Mr. Scott: He shows on page 2 of his exhibit the Direct Maintenance Account, excluding account 601; on Traffic Expenses, excluding Account, 621 and account 631; Commercial expenses, excluding accounts 640-10 and 642; on General Expense he has excluded, with the exception of accounts 668 and 674—

"Q. (Interrupting.) Now, take up those accounts, Mr. Scott, and tell us what they are, and just what it is that he has excluded here in Houston,—what part of the work that is being done that he has excluded."

"A. The first item which he has excluded is Account 601, Supervision of maintenance,—that amounts to \$18,281.00. That is the amount which has been charged to Houston as supervision of Maintenance, being an allocation apportionment of the salaries and expenses of the Division, District and General Plant, whereas that is a Division Plant and Superintendence of the General Plant, Superintendence, and so forth, that has been allocated to Houston and all strictly in accordance with the Inter-State Commerce Commission's requirements."

1820 The total expense incurred at Houston amounts to more than the amount which we have allocated to Houston. Of course, the expense at Houston is not all applicable to maintenance. The General Plant Superintendent and the Division Plant Superintendent and their forces are engaged not only on maintenance work, but also on construction work, and we divide between construction and maintenance this supervision item. The total payment at Houston was \$27,396.00, and as I say, I only allocated to Houston \$18,281.00. The amount allocated to the exchange is based directly upon the amount of maintenance labor which has been spent at the exchange. The local maintenance supervision is charged directly to the work as the work is done.

The next item which Mr. Lyndon has excluded is Account 621. Account 621 is Traffic Superintendence. The total amount is \$26,329.00. Traffic Superintendence covers the salaries and expenses of the division traffic superintendent and his forces, and the salaries and expenses of the General Traffic Superintendent. The amount of local supervision spent locally at Houston in connection

with local work was \$8,032.00. That is excluded here by Mr. Lyndon but he has later included part of the figures by taking 25% of them. The amount, total expenses and salaries of the Southeastern Division, that is, Mr. Kellogg's forces, that is, Division and Traffic Superintendence, was \$13,785.00. That also was 1821 spent at Houston, but not in connection with the Houston exchange, Houston is the headquarters of the South-eastern Division. Mr. Kellogg and his forces performed services for this local exchange as part of that division. The part of that which I have allocated to Houston was 61.9% or \$8,537.93. I took 61.9% because the amount charged to the exchange is determined by getting the total direct traffic expense in the South-eastern Division and finding what proportion of the total traffic expenses at Houston are to the total for the division and obtain the per cent and applying that per cent to the total expenditures.

The next item we have is the item of Traffic Superintendence at the General Office, which, for the State, amounts to \$391,975.00. We proportion to Houston 16.4% of that in the same manner as we apportioned the division item. The total charge to Houston is \$26,329.00. Now, Mr. Lyndon proposes in his 25% basis to allow 25% of this Traffic Superintendence. That would give \$6,582.00. The direct expense here at Houston alone was \$8,032.00. So that, he has excluded more than the direct expense which you have here in Houston. On his 50% method he only has allocated \$13,165.00, and don't cover the direct at Houston, plus its share of the Division expense.

The next item which Mr. Lyndon has treated as a general item, or an allocated item is Account 631, Miscellaneous Central 1822 Office expenses. He has apparently gotten the wrong idea as to what that is. That is practically all spent at Houston and is not an allocated item. There is possibly one hundred dollars in there of allocation. There is \$15,415.00 for this item which he has excluded, when that expense, with the exception of about \$100.00, is all incurred right here in Houston. That account covers janitor's service, light, heat, fuel, gas, toilet supplies and all other expenses incident to and in connection with the building,—it is building expense.

The next item is Account 640-10,—General Commercial Administration. That amounts to \$10,656.00. The total amount spent at Houston chargeable to this account was \$9,695.00. Part of that was local and chargeable to the exchange, and part of that was in connection with the Division office, this being a Division Office, the same as for the Traffic Department, and the amount of the local charge is \$2,094.00. That is in connection with the operation of the local exchange here. The total expenditures of the Division were \$6,972.00. We allocated to Houston 41.6% or \$2,903.00, and the general company charges were \$48,318.00; we allocated to Houston 11.7%, or \$5,659.00; the total charge to Houston for General Commercial Administration being \$10,657.00. These allocated charges here, in which is included a part of the expense of

the General Superintendence, such as the General Plant Superintendence, the General Traffic Superintendence, and General Commercial Superintendence,—those officials all perform services for the local exchange.

I might call attention to what the effect of taking only part of this expense would be; taking 25% of that would be charged to the exchange,—would be \$2,664.00 out of an expenditure at Houston of over \$9,000.00, and on the 50% basis there would only be \$5,328.00 charged to the Houston exchange, which is just about the amount of local charges, plus their pro rata of the Division expenses here.

The next item is a small item, account 642,—advertising, \$3,669.00. The bulk of that is a direct expenditure at Houston. I mean that the most of that is for advertising right here in Houston, the most of it being payments for Newspapers for ads which we have had here. Mr. Lyndon did not eliminate all of that. He only allows a per cent of it. You see, he has taken this all out in toto, but has put it back when he allows 25% of the total, he has put back 25% of this expense and it is not all eliminated, only part of it, but on that particular item the amount spent at Houston was \$2,076.90. That was paid to newspapers and was for advertising. On the 25% method the only charge to Houston would be \$917.00, which would leave over a thousand dollars which I don't know what exchange would have to bear. It is not a general charge and could not be

1824 charged to any other exchange. That money is spent right here in Houston. His 50% method does not allow sufficient to cover the direct expenditures.

I will next take up the item of General expense. The General expense which I have allocated to Houston, a part being direct expenditures, and part based on prorate is \$48,640.61. That is a total of all the general expenses and includes a number of accounts. It is made up of accounts 662,—675 inclusive. Now, included in that \$48,000.00 are the following direct expenditures at Houston: insurance, \$2,317.00; accident and damages, \$11.60; law expense in connection with this accident and damages, \$71.91; the amount paid to the Telephone inspector, which is \$100.00 a month for 12 months,—\$1,200.00. That is an inspector appointed by the City of Houston here and whose salary is paid by the Telephone Company. I have been looking for him since I have been down here and I have never seen him. The payment in connection with our relief plan were \$15,139.00 at Houston, and other general expenses, miscellaneous items amounted to \$437.83. That gives the total direct general expenditures at Houston of \$20,177.00. There was allocated to Houston \$28,463.27. Included in that, of course, is the expense of the general Manager and the General officials of the Company.

I might call attention to the relief department item. The total payments at Houston were \$16,139.00 but we do not treat
1825 the relief department as a direct expense item. We consider that the fund is a general fund that any exchanges can draw on, and if in one year an exchange has a great deal of business, a number of accidents, and perhaps a death or two, if they were held to their exact quota we couldn't make the payment in accordance

with the plant, and therefore we consider and treat it as a general fund from which all exchanges can draw. One exchange may not get its full share, may not draw as much in proportion this year as it does the year before, and one exchange may draw more in proportion than the other. Mr. Lyndon has asked for the direct payments in connection with this plan and I told him that I didn't have it. Since then we have made the study and we have found the actual payments which have been made here at Houston. I did make the statement that I thought that, due to climatic conditions, things I had heard, that our sickness expenses were high here and that probably our plan of allocation was giving Houston the benefit of it. So that instead of charging Houston with its total payments, which we made here, we only charged to Houston \$12,278.00, which gives Houston the benefit,—they get the best of it by \$3,861.00 on the plan of allocation.

I will now take up the second column of this Exhibit No. 171 and explain that. I have explained in some detail the items which Mr.

Lyndon considered allocated items and shown what the results were as regards a comparison with certain percentages of that amount and the actual expenditures at Houston. In this second column I have simply shown in money what the aggregate results of these assumptions were. In other words, assuming that because we allowed only 25% of the tolls, only 25% of certain expenses should be allowed, and reducing the amount of 4½% payments, and eliminating income taxes, Mr. Lyndon has taken out of our expenses \$138,645.00; that is, without considering the \$223,680.00 reduction which we made in the amount of depreciation. Taking the total of these two items, made a reduction of \$362,325.00 in expense, or it resulted in increasing our revenues by that same amount. The net result, after making these assumptions, is to show, under Mr. Lyndon's method, that the net income was \$44,271.00. That is allowing 25% of the tolls and eliminating much of the general expense. Then, in order to earn 8% on Mr. Hoag's reproduction figure, we would need \$476,716.00 more revenue under Mr. Lyndon's set up of the revenues and expenses. The next column is the same as the column I have just explained, except that 35% of the tolls were taken and 35% of this so-called allocated expense. The net result being that Mr. Lyndon decreased the expenses or increased the revenues by \$394,492.00, and his net results under this method are to show income of \$76,439.00. And to have made 8% on Mr. Hoag's reproduction new, less depreciation, would require additional revenues of \$444,548.00.

The next column shows the computations, using 50% of the tolls and 50% of the so-called allocated items, and shows an increase in revenues under Mr. Lyndon's method, of \$442,749.00. His net revenue figure being \$124,694.00. We would need \$396,292.00 in revenue in order to get an 8% return upon Mr. Hoag's figure.

The last column is on the basis of taking 75% of the toll and 75% of the allocated expenses, which shows the elimination of \$523,169.00 of expenses and a return of \$205,115.00, and to have

made 8% on Hoag's reproduction valuation would require \$315,872.00.

I determined the amount of working capital in the Company's set up and did that by going to the books of the Company and determining from the books exactly the amount of working capital which we have been using. I used no estimates, except apportionments to the exchanges. The figures were actual figures. This same method of determining the working capital has been used by me in all cases that I presented to any of the Commissions, and was used by Mr. Benzel, my predecessor, in all of his cases, I used this set up in a recent case in the State of Missouri. The decision came out 1828 November 29th, 1919. I figured the working capital in the manner which I set out in Exhibit No. 41, and the commission figured it from some other method. That was in a state-wide case for the State of Missouri before the Missouri Public Service Commission. The commission figured it out in a different manner. They had in some previous case, the St. Louis case, determined what they thought was a fair amount of working capital. The difference in the amount of working capital found by the Commission, and the amount found by me was a difference of \$17,000.00, their figure was \$17,000.00 less than mine. The total amount involved was over a million dollars. In other words, in working out the amount of working capital as required for the whole state of Missouri, I used this scheme of setting it up and the commission used some other scheme, and the amount being something over a million dollars, the Commission adopted a figure which was about \$17,000.00 less than the amount I had determined under my scheme.

This Company has money outstanding on the first of the month. Mr. Lyndon has stated that we collect a great deal of our money in advance. Exhibit No. 41 shows that for the nine months ending September 30th, 1919, we had outstanding on an average nearly 1829 \$70,000.00 at the end of every month. That is for the Southwestern Telegraph & Telephone Company, for Houston alone.

Something has been said about how the Company carried on its books the physical property which it purchased from the Houston Home Telephone Company. I have an exhibit showing the exact figures it was put on the books at.

Mr. J. D. Frank: We offer that exhibit in evidence, and ask that it be marked as Plaintiff's Exhibit No. 172.

(Thereupon the said exhibit was received in evidence and marked: "Plaintiff's Exhibit No. 172, which reads as follows:

1830

PLAINTIFF'S EXHIBIT #172.

A. E. Scott.

The Southwestern Telegraph and Telephone Company.

Houston, Texas.

*Amounts at Which Houston Home Telephone Company's Property
Was Placed on Books of the Southwestern Company.*

Class of plant.	Amount.
Materials & Supplies.....	\$26,229.85
Land	51,660.00
Buildings	55,622.77
Central Office Equipment.....	158,530.21
Station Apparatus	1,860.02
Station Installations.....	175.48
Private Branch Exchanges.....	629.79
Booths & Special Fittings.....	125.67
Exchange Pole Lines.....	59,118.66
Exchange Aerial Cable.....	84,604.29
Exchange Aerial Wire.....	11,825.41
Exchange Underground Conduit.....	178,399.90
Exchange Underground Cable.....	161,133.41
Toll Pole Lines	2,979.52
Toll Aerial Wire.....	1,324.90
Toll Underground Cable.....	7,329.90
Office Furniture & Fixtures.....	1,840.15
Stable, Garage Equipment.....	1,514.02
General Tolls & Implements.....	4,584.13
Intangible Capital	561,322.25
Total	\$1,359,740.94
Total Physical Property Purchased.....	\$208,518.69
Total Plant Displaced.....	340,373.59
Balance plant still in service.....	\$468,145.10
Plant Displaced	\$340,372.59
Salvage from Sales and Recoveries.....	126,616.04
Charged to Intangibles	\$203,757.55
Charged to Intangibles at time of purchase.....	551,222.25
	\$754,979.80

1831

An appraisal of the property was made and its reproduction cost new at that time was determined, and its depreci-

ated condition was determined, and the valuation placed on the property on the basis of its value in its condition at that time. This was in conformity with the rules of the Inter-State Commerce Commission with reference to such matters, strictly in accordance with the Inter-State Commerce Commission as set out in uniform systems of accounts on Page 33, paragraph No. 13. That system of accounts was introduced in this case as Exhibit No. 11. Those rules were complied with literally in placing this property on the books of the Company as shown in Exhibit No. 172.

"Q. Mr. Scott, on page 1 of Mr. Lyndon's Exhibit No. 2 he sets out what purports to be the additions to the Houston plant, that is, on the physical property from 1901 to and including December 31st, 1919, his figures being, \$3,663,432.00.

"A. I have prepared an exhibit showing what the net additions have been to the plant for the period 1901 to December 31st, 1919.

Mr. J. D. Frank: We offer that in evidence and ask that it be marked Plaintiff's Exhibit No. 173.

(Thereupon said exhibit was received in evidence and marked Plaintiff's Exhibit No. 173, which reads as follows:)

(Here follows Plaintiff's Exhibit No. 173, marked page 1832.)

Summary of Physical Property at

Year.	Pole lines.	Right of way.
1901 [¶]	59,190	104
1902	12,135	...
1903	5,947	98
1904	7,015	...
1905	6,474	...
1906	6,685	...
1907	10,033	...
1908	3,147	...
1909	6,552	...
1910	11,184	56
1911	14,296	515
1912	13,360	231
1913	28,086	8
Total 12-31-13	184,104	1,012
1914	23,732	28
1915	68,560	...
1916	9,465 [†]	...
1917	80,043	27
1918	7,952	...
1919	5,174	26
Add. 1914-1919	103,996	81
Total 12-31-19	288,100	1,093

[¶]The amounts shown for 1901 are the amounts as of the end of the year.
[‡]Deduction in Subscribers' Station Equipment due to transfer of Drop Wire, in the
^{*}This is the amount as of the end of the year, not net additions.
^{**}Net addition from 1914 to 1919 inclusive.
[†]Red in copy.

PLAINTIFF'S EXHIBIT No. 173.

A. E. Scott.

The Southwestern Tel. & Tel. Company.

of Physical Property at Houston, Texas, as per Books Dec. 31, 1919, Showing Net Additions for Each Year.

Line.	Right of way.	Aerial cable.	Aerial wire.	Undergr. conduit.	Undergr. cable.	C. O. eqript.	Substa. eqript.	Real estate.	Interest during constr.	Gen. eqript.	Total.
1,190	104	60,750	53,660	34,928	45,716	42,346	21,674	.....	.....	.....	318,368
1,135	...	24,270	4,045	851	8,230	19,809	530	.....	.....	.....	69,870
5,947	98	24,911	12,820	19,874	10,250	20,055	5,427	.....	.....	.....	99,382
1,015	...	21,287	5,403	4,330†	18,203	16,753	4,439	.....	.....	.....	68,770
1,474	...	20,447	8,619	6,305	7,335	649	7,815	.....	.....	.....	57,634
1,685	...	32,840	4,293	15,610	33,479	75,130	9,260	52,212	.....	.....	229,509
1,033	...	19,851	10,151	.....	10,322	376	14,391	82	.....	.....	65,206
1,147	...	16,874	10,079	422	6,004	1,768†	6,614	4,754	.....	.....	46,126
1,552	...	33,603	9,447	2,277	10,801	16,653	55,023	19,699	.....	.....	154,055
1,184	56	12,898	9,385	10,998	10,157†	86,834	25,314	126,293	.....	.....	272,805
1,296	515	11,239	13,778	61,925	61,951	48,568	36,093	140,775	.....	.....	439,140
1,360	231	40,467	51,586	44,705	39,625	293,988	10,339#†	28,909	.....	.....	502,532
1,086	8	24,563	24,584	14,149	51,044	94,358†	44,384	37,414†	865	18,880	74,791
1,104	1,012	344,000	217,849	207,714	292,803	525,026	220,625	285,310	865	18,880	2,398,188
1,732	28	42,539	20,052	28,623	29,999	45,942	33,776	18,232	1,000	.....	243,923
1,560	...	86,974	18,887	180,743	171,007	287,023	7,012	108,364	2,639	.....	931,209
1,465†	...	13,843	2,342	9,279	1,286†	4,813	12,330	6,275	491	.....	38,622
1,043	27	26,936	3,523	14,195	62,074	136,067†	18,224	1,410†	558	.....	†3,897
1,952	...	34,766	2,043	229	4,136	39,062	13,795	98,269†	706	**	4,420
1,174	26	19,860	14,535	19,942	27,256	102,138	35,225	409	1,793	22,870	249,228
1,996	81	224,918	61,382	253,011	293,186	342,911	120,362	33,601	7,187	22,870	1,463,506
1,100	1,093	568,918	279,231	460,725	585,989	867,937	340,987	418,911	8,052	41,750	3,861,693

at the end of the year.

Transfer of Drop Wire, in the amount of \$28,883.72 from substation account to Aerial Wire Account.
Net additions.



1833 There is some difference between this exhibit and the amount which Mr. Lyndon set up on page 1 of his exhibit. That is due to the fact that Mr. Lyndon, while accepting some of our book figures, did not accept them in their entirety, so that he arrived at a total of \$3,663,000.00, while our books showed \$3,861,-693.00, a difference of something like \$200,000.00.

This exhibit showing net additions does not show anything for working capital, does not include working capital or cost of establishing business, and does not include the intangible items in connection with the purchase of the Houston Home Telephone Company. It includes interest during construction which has been charged on the books.

We have not always charged interest during construction on our books but prior to 1908 no interest during construction was charged on the books. From 1908 to 1912 interest during construction was charged on the books, and included under the various elements of plant. In 1913, when the Inter-State Commerce Commission issued their accounting circular, that provided a separate account for interest during construction. Then from 1913 on you will see amounts under the heading of Interest During Construction.

Prior to 1910 supply expense, engineering expense, plant supervision and general expense was not charged to the plant account, and there is nothing included for those years. From 1834 1910 on, those items are included under the various elements of plant.

On Page 10 of Mr. Lyndon's Exhibit No. 2 under the heading of sub-stations, P. B. X., pay station, and accessories, he said: "The book cost records for these items of equipment show that in 1912 the removals exceeded the additions by an amount equal to \$11,-257.00." Then he assumed the removals in 1912 were of a large portion of equipment existing in 1901; and after making further assumptions there, he arrives at an average age of seven and a half years for those portions of equipment. The removals in that year were not as great as he says they were. Mr. Lyndon took those red figures, which indicate the net removals, and assumes that is what it was. As a matter of fact, there was a change in the classification of drop-wiring. It had been carried as sub-station equipment up to 1912, and in 1912 it was decided that drop-wiring more properly came under the heading of aerial wires, and that transfer was made from the sub-station account to the aerial account. That transfer amounted to \$28,000.00, so that if that transfer had not been made, there would have been a net addition to sub-stations in 1912, and Mr. Lyndon's assumption would have been all shot to pieces,—would not have been borne out by the facts. It is simply a book-keeping item. It has no relation whatever to additions 1835 or removals. The real facts are that the removals did not exceed the additions, but the additions exceeded the removals by some \$18,000.00 for that year. There is some difference in this Exhibit No. 173 to the figures that Mr. Lyndon used.

I have prepared an exhibit showing the net additions from Jan-

uary 1st, 1914 to January 1st, 1920. I have it in two exhibits. On this exhibit No. 173 I have shown the figures as they are on the books, and I have another exhibit here showing the same figures which are contained in exhibit No. 173 compared with the figures which Mr. Lyndon used.

Mr. J. D. Frank: We offer that in evidence and ask that it be marked as Plaintiff's Exhibit No. 174.

(Thereupon said exhibit was received in evidence and marked "Plaintiff's Exhibit No. 174" which reads as follows:

(Here follows Plaintiff's Exhibit No. 174, marked page 1836.)

	1914.		Difference.	1915
	Books.	Lyndon.		Books.
Auto.....	.....	.....	.....	107,283
Land & Buildings	18,232	4,200	14,132*	1,081
Auto.....	.....	.....	.....	59,119
Pole Line	23,731	23,731	.....	9,442
Auto.....	.....	.....	.....	11,825
Aerial Wire	20,052	20,052	.....	7,062
Auto.....	.....	.....	.....	84,603
Aerial Cable.....	42,539	42,539	.....	2,370
Auto.....	.....	.....	.....	178,400
U. G. Conduit.....	28,623	28,622	1*	2,343
Auto.....	.....	.....	.....	161,133
U. G. Cable.....	30,000	30,000	.....	9,874
Auto.....	.....	.....	.....	2,821
Sub. Sta. Equipt.....	33,776	33,776	.....	4,191
Auto.....	.....	.....	.....	158,530
C. O. Equipt.....	45,942	45,942	1*	128,493
Auto.....	.....	.....	.....	.....
Right of Way.....	28	.....	28*	.....
Auto.....	.....	.....	.....	.....
Int. during Const.....	1,000	1,000	.....	2,639
Auto.....	.....	.....	.....	.....
General Equipt.....	.....	.....	.....	.....
Total.....	243,923	229,861	14,162*	931,209

"Red" indicates Lyndon short.

"Black" indicates Lyndon over.

*Red in copy.

PLAINTIFF'S EXHIBIT #174.

A. E. Scott.

The Southwestern Tel. & Tel. Co.

Houston, Texas.

Summary of Net Additions, Years 1914 to 1919, Inclusive.

1915.	1916.				1917.				1918.				1919.			
	Lyndon.	Difference.	Books.	Lyndon.	Difference.	Books.	Lyndon.	Difference.	Books.	Lyndon.	Difference.	Books.	Lyndon.	Difference.	Books.	Lyndon.
		107,283*														
	7,500	6,419	6,275	7,500	1,225	1,410*	7,500	8,910	98,269*	9,262	107,531	409	7,577	7,168		
	66,000	6,881														
	9,442		9,464*	9,464*		8,042	8,042		7,952	7,952		5,174	5,174			
	11,825															
	7,062		2,342	2,342		3,524	3,526	2	2,043	2,044		14,535	14,535			
	81,738	2,865*														
	5,235	2,865	13,842	13,842		26,936	26,936		34,766	34,766		19,860	18,860	1,000*		
	180,743	2,343	9,279	14,195	4,916	14,195	453	13,742*								
	9,279	6,936							229	230		119,942	19,942			
	116,668	44,465*														
	22,242	12,368	1,286*		1,286	62,074	62,074		4,136	4,136		27,256	27,256			
	2,821															
	4,190	1*	12,329	12,329	1*	18,224	18,224		13,795	13,795		35,225	35,225			
	128,493	158,530*	4,813	4,813		136,067*	18,773	154,840	39,062	38,847	215*	102,138	99,822	2,310*		
						27		27*				26		26		
	2,639		491	491		558	558		706	707	1	1,793	1,792	1*		
										221	221	22,870	7,612	15,258		
	655,877	275,332*	38,622	46,048	7,426	3,897*	146,086	149,983	4,420	111,960	107,540	249,288	237,801	11,427*		

Summary.

	Books.	Lyndon.	Difference.
1914.....	243,923	229,861	14,162*
1915.....	931,209	655,877	275,332*
1916.....	38,622	46,048	7,426
1917.....	3,697*	146,086	149,983
1918.....	4,420	111,960	107,540
1919.....	249,228	237,801	11,427*
Total...	1,463,505	1,427,633	35,972*



1837 There are a great many differences, quite a number of differences between the figures which Mr. Lyndon used and the figures as shown by the books. The principal difference, of course, being due to the fact that in taking the automatic property here he used the figure for his inventory for appraisal,—the figures from the old Automatic Company books. Of course, we put the property on, as I have explained, in accordance with the Inter-State Commerce Commission, and the figures are different. There are some differences, some of them are clerical errors, and there is quite a difference in the item of land and buildings. Mr. Lyndon assumed an increase in the value of land of \$7,500.00 a year. Of course, that is not on the books and is not reflected there. There were net additions to land and buildings that actually did take place and which were placed on the books. The net result of that,—the net additions for the past six years, as shown by the books, exceeded Mr. Lyndon's figures by some \$35,978.00.

The red figures that I have under the various columns marked differences, show wherein Mr. Lyndon has failed to include enough property as shown by the books, and the black figures shown under those columns marked differences show where he has added too much, and the final result is that he has failed to include all of the 1838 property to an amount of \$35,972.00.

In the lower left hand corner here is a statement reading: "See Sheet No. 2 for explanation of differences." That means that I had a Sheet No. 2 prepared intending to have it typed, but never did have it typed, and it is not a part of the exhibit. That should be cut out,—that notation upon the exhibit.

I have made a study of what the payments have been for the last five years in Houston under the Employees' Benefit Plan. I made that quite recently, within the last two days. I have prepared an exhibit showing how much those payments have been, and how much has been charged to Houston.

Mr. J. D. Frank: We desire to offer that in evidence and ask that it be marked Plaintiff's Exhibit No. 175.

(Thereupon said Exhibit was received in evidence and marked: "Plaintiff's Exhibit No. 175" and reads as follows:

1839

PLAINTIFF'S EXHIBIT #175.

A. E. Scott.

The Southwestern Telegraph and Telephone Co.

Comparison of Actual Payments at Houston on Account of Benefit Fund Plan and Amounts Charged to Houston.

	1915.	1916.	1917.	1918.	1919.	Total.
Sickness Benefits.....	3,223	2,516	2,744	6,988	5,864	21,337
Accident Benefits.....	1,498	648	957	354	3,699	7,160
Accident Expenses.....	668	531	512	97	1,405	3,213
Death Benefits.....	.....	2,714	480	1,684	4,224*	9,102
Other Benefits.....	145	3,307	5,382	5,406	947	15,187
Total Payments.....	5,530	9,716	10,075	14,529	16,139	55,989
Amount Charged to Houston.....	3,803	7,771	10,431	17,139	12,279	51,423
Charge-to Houston Less than the Actual payments by.....	1,737	1,945	356†	2,610†	3,860	4,566

*Death Benefits in 1919:

Wm. Bloxtons.....	\$2,724.00
L. Sumbarde.....	1,500.00
Total	\$4,224.00

†Red in copy.

1840 The total payment at Houston for the five years ending December 31st, 1919, amounting to \$55,989.00. The amount charged to Houston under our method or prorating the expense, to Houston, rather than taking the actual charges, was \$51,423.00, or a difference of \$4,566.00 in favor of Houston. That is, the payment at Houston was \$4,566.00 in excess of the amount charged to it. Under the heading of death benefits, for the year 1919, there was a charge of \$4,224.00, and there was \$2,724.00 paid to William Bloxsom and \$1,500.00 to L. Sumbardo. That case of Bloxsom was where the negro fell against something and was killed. I do not remember the details, but it was an accident case. I don't know who Bloxsom was. In the case of Sumbardo he was one of the employees over here in the Preston Building, in the contract department, and he died from natural causes.

"Q. Now, Mr. Scott, at the bottom of page 2 and the top of page 3 of Mr. Lyndon's exhibit No. 1, in discussing the additions to the plant from 1914 to 1919, he says that during that period of time there was a gain of 4,608 telephones, and that *during* the average cost per telephone for these additions was \$310.00; he also says that the usual cost for such additions, under the general conditions such as obtained in Houston then, customarily *vary* from \$30.00 to \$100.00 per station, the latter figure being considered as unusual and excessive. Now, is Mr. Lyndon correct in his estimate of the number of telephones which were gained during that period of time?"

"A. No, sir, he took the wrong figure in determining the net gain."

He took his 1914 figures from his 1914 report and he took his 1919 figures from the statement of Mr. Baker. Neither of these figures were the figures which should have been used. The total number of stations on December 31st, 1919, was 27,775, and the total number of stations on January 1st, 1914, was 20,066, or a net gain for the six years of 7,709 stations. Dividing that number of stations into the net additions for that period of time gives \$188.00 per station cost of the additional physical property added to the exchange. That does not include any of the intangible property. That \$188.00 per station is the average cost instead of \$310.00 per station which Mr. Lyndon figured out.

"Q. Mr. Scott, does it mean anything when you draw a comparison, or attempt to make a comparison with reference to whether or not your investment is excessive under this method?"

"A. There can be, to my mind, very little association—there may be at some time an association between the net additions in money and the net additions in stations, but very often there is no association. I have made a recent study in Missouri of the net additions to stations and the net additions to plant, and got what appeared to me foolish figures, and I decided that you couldn't tell a thing about it."

I have a certified copy of the report of the Keystone Telephone Company to the Inter-State Commerce Commission for the year 1918. I will show you an illustration of the fallacy of attempting to determine whether or not an investment of this kind is excessive on this method. On page 204, Schedule 211-B, at the bottom of the page is shown a net addition to physical capital of \$249,077.00. That is addition to the plant account. Someone referred to that here a day or two ago as \$170,000.00. In explanation of that report, it appears that figure was erroneously taken. I believe this figure is the wrong one, it is the 1917 report. I think that \$170,000.00 was right, and it was in 1917 that they showed an excess of \$170,000.00 in the plant and a decrease of some sixteen hundred in stations. Regardless of whether it shows an increase or a decrease, it is not a very accurate way of determining whether or not the investment was excessive. There is no association between net additions to stations and net additions to money. Take what may happen in Houston if we change to the automatic board from the manual board.

I understand that it is going to cost about \$750,000.00, that 1843 the additional investment in Houston will be that. That is after we have made due allowance for the boards which are removed, not the junk value, but taking out the full value of the boards which are removed. I figure that we would have \$750,000.00 for net additions and probably no additions to stations. With reference to the statement which has been made in this case, that the Keystone Telephone Company set aside a reserve for depreciation of \$4.00 per station, and that it has been found sufficient. I have examined the records from the Inter-State Commerce Commission with reference to that. I have a certified copy of the Inter-State Commerce Commission's report from the Keystone Telephone Company for the year 1914. I will tell you why I couldn't get that other figure right a while ago,—because I got my wires crossed. I was talking from the 1914 report before. On page 313, of schedule No. 396, they show a transfer of \$534,516.00 from their surplus account to their depreciation reserve account. Now, on that other net addition proposition, instead of \$249,000.00 which I first mentioned, the net additions were \$172,173.00. That is the report for the year 1918, and their station loss in the year 1918 was 1,555 stations.

During the course of Mr. Lyndon's direct examination he testified that interest during construction and also taxes during 1844 construction should be capitalized. The Southwestern Company capitalizes interest during construction, but does not capitalize taxes during construction. The Company has the authority and instructions of the Inter-State Commerce Commission for capitalizing this interest during construction.

Mr. Howard: We admit you have the right to do that.

I have made a study of this Keystone Telephone Company's 1918 report for the purpose of making a comparison between the calling rate of the Keystone Telephone Company in Philadelphia and the calling rate of the Southwestern Telegraph & Telephone Company in Houston and the result of my investigation was that I found the

Keystone Company for the year 1918 had 144 local exchange messages per month, *ot* about four per day per station; 114 per month per station or about four per day.

Mr. D. A. Frank: That is not four per day, that is less than three a day.

Mr. Scott: This is 114 per station per month.

Mr. D. A. Frank: I beg your pardon.

1845 The calling rate at Houston is about nine per day, so that the calling rate for Houston is more than twice the calling rate of the Keystone Company in Philadelphia. Now, the Traffic expense for the Keystone Company for the year 1918 was \$268,000.00, and the Traffic expense for Houston for the year 1919 was \$418,000.00. That was less than one half.

I have a statement showing the realized depreciation. It was not prepared by me but prepared by Mr. Hoag.

Mr. J. D. Frank: Well, we will put it in by Mr. Hoag.

Cross-examination.

(Questions by Mr. Howard:)

In this comparative total that I make here in my exhibit, 171, the first difference in the expenses is the four and a half per cent. I had one view of that and Mr. Lyndon had another. Then on the income tax my company has one view and Mr. Lyndon another. On depreciation I show a figure in red of \$223,680.00. That is

1846 an expense that is just as real as paying the operators' wages and must be provided, just as much as they must be provided. It is not as definite of ascertaining as the operators' wages, but it must be determined on experience, and the amount is derived from the percentage. It was determined by Mr. Hoag from his inventory and I took it from his inventory and appraisal. The physical property was something like \$6,000,000.00 I think, and the rate was 6.33 and that produced \$360,000.00. I don't know what prices Mr. Hoag used to start off with. I understand he used prices based on a year or two years prior to the time of his appraisal. Now, as to whether they are high prices or low prices, that is a matter of judgment. Of course, if Mr. Hoag had used \$10,000,000.00, we would have had to figure the depreciation and I don't know what figure we would have gotten.

All these things that I have gone over and pointed out in regard to Mr. Lyndon's set up of this expense indicates that I disagreed with Mr. Lyndon in the matter of how these items should be handled, and I think Mr. Lyndon agrees with us that his set-up in Exhibit No. 7 is wrong. He has not testified to that effect. I have talked to him. I think that he feels that the omission of part of the toll expenses naturally nullifies the effect of his exhibit. Of course that may not be right. (After conversation with Mr. Lyn-

don, witness testified as follows:) Mr. Lyndon thinks that
 1847 I did not quite understand him. I withdraw that statement.

This Company has a reserve on hand for replacements. It is in the form of an investment in fixed capital. It amounts to five and a half million dollars. That is for the State as a whole. That is not kept as an exchange item itself. I understand by that that they set up a reserve and then take that money and spend it anywhere without regard to where it was earned. It saves borrowing money to use the reserve. You borrow it from the reserve a little at a time, until such time as you need a large amount of new capital. At that time you borrow sufficient money to replace that reserve which you have used up. In other words, you keep your reserve working all of the time. We do not keep any books to show what part of that reserve was earned in Houston or any other exchange, you can only tell that by going to the balance sheet for the company as a whole and the fact that you will find a reserve on hand in cash and you do have additional property it means that you have used your reserve to replace property.

"Q. Well, now, don't you allocate that fund to Houston upon the basis of fourteen per cent?"

"A. Allocate the funds to Houston?"

1848 "Q. Yes, here is what I mean exactly; Mr. Scott; that this fund, this replacement fund, is earned by the different communities from the people and paid by the different communities. Now, you gentlemen take all that and put it into a common pot and when you come to take it out, do you mean to say that you take that fund and put it all in San Antonio, or put it all in Austin or some other town and not use any of it in Houston, that you don't keep any, that although you collect certain amounts, definite amounts from certain exchanges and localities that you put it all in a hotchpotch and never unscramble the eggs?"

"A. If you would not do that, it would be very uneconomical.

"Q. I did not ask you about that. It seems you and I can never agree upon economics because we don't look upon them at all from the same angle.

Mr. D. A. Frank: Upon Mr. Lyndon's theory, this fund would be \$28,000,000.00 in debt in Houston in the last ten years.

Mr. Howard: I don't know about that; somebody has been getting the worth of it.

It makes no difference to the exchange what amount is collected from a particular exchange and the amount of that fund that is allocated to it for replacement. There is no difference between
 1849 the way we keep our books and the facts. If our replacements have eaten up our reserve at the particular exchange we have no reserve in the pot, or anywhere else for the exchange.

"Q. But, if you collect this 6.33 from this community every year and you put it in a big pot and you get that money and you pull that down from all over the State, that is a nice big fund, then, now, does the money, does this local plant get back in the way of replace-

ment or upkeep of this plant or additions to this plant or the benefit of this plant all depends upon the whim of somebody."

"A. It depends on the needs of the community."

"Q. It depends on the need of the community, and if Galveston needs it worse than San Antonio, would you take our money and send it up to Dallas and if Houston needs it worse than Dallas you take Dallas money and send it down here?"

"A. Yes, but we have never taken any of Houston's money."

We have never taken any of Houston's money but that is the way the reserve is handled. That is the fact in the case. As long as Houston is getting all the replacement it needs, and the reserve is there to take care of them when they are required, Houston need not worry where the reserve is, whether it is in cash or whether it is invested in property. This community does not care anything

1850 about how much money we have taken out of here and how much was sent to Dallas of El Paso. You don't care if we take \$100.00 out of Houston and invest it in property at San Antonio, or we put it in the Bank. Does it make any difference to you whether we, when we need the \$100.00, we would have to get the \$100.00 from somewhere. It does not affect anybody at any time, as long as Houston gets all it needs all the time, what is the use of dividing the pot up, put some in one time and some in another. They are getting their additions just as fast as the needs of the company require it. The community is not entirely dependent upon the arbitrary determination of the Executives of the company as to where the money will be spent. If we did not handle it in this way I think you would accuse us of being very poor managers.

My exhibit No. 172 sets up the classifications of the property of The Home Telephone Company. There is no appraisal of that property. I worked that up to show how we now have \$754,000.00 in intangibles when we only had \$551,000.00 at the time we bought the property. The next to the last item in the statement shows \$551,222.00. That was the excess of the cost of the property, over its structural value put in Account 204, in accordance with the Inter-State Commerce Commission instructions. I have that intangible item as \$551,222.00 and Mr. Lyndon got an item of

1851 something like \$700,000.00. That would depend on the valuation that was placed on the physical property.

"Q. You placed a somewhat higher value on the physical property than Mr. Lyndon, wherein he claims that there was about \$700,000.00 that was intangible that was represented by no assets, you claim there was only about \$551,000.00."

"A. No, that was simply the difference between the structural value and the total amount paid at that time."

But since that time, we have taken down a considerable part of the old automatic property and determined that it had no structural value and have added to this \$551,222.00 the loss on that property. That is the way that developed to the \$754,000.00 which we now have on the books. So that, Mr. Lyndon, and ourselves at this time are pretty close together. We are pretty nearly agreed upon that

item of \$754,000.00. I think Mr. Lyndon's figures came from a previous exhibit of ours. At that time there had not been as much property taken down and thrown away. I claim that I set that item up in accordance with the rules of the Inter-State Commerce Commission. I did not say that the Inter-State Commerce Commission has ever determined that that must be considered as plant value in fixing the value of the property for the purpose of bearing a return,

I did not say anything like that. I was telling you exactly 1852 what was on the books, I was not talking about rate matters.

The purchase of the Telephone Company was financed in this manner: We assumed their bonded indebtedness of a million dollars. We paid certain floating indebtedness that they had, billed outstanding, I think the total of the two was the amount that we paid, almost equalling the total we paid. In addition to that we paid the City \$80,000.00, that making up the total purchase price of the property. That is part of the amount that Mr. Lyndon has thrown out, part of the \$700,000.00. I used the word "assumed" in the sense that I considered it a definite obligation to pay them and we have paid some of them. We have since bought \$70,000.00 and paid for them practically, paid them off. Nobody knows who owns those bonds, they are out in the hands of the public. We have never made any arrangement for adjusting them in any way but they are carried on our books at par and I said we have paid for \$50,000.00 of them at par. We are paying them off day by day.

Mr. Lyndon and myself substantially agree upon net additions since 1914 there being a difference of only about \$35,000.00 but that just simply happens to work out that way, Mr. Lyndon assuming certain things and eliminating other things and putting some things in, comes to a net result of \$35,000.00, 1853 apart from mine. Of course, my figures are the actual figures of the books and his figures, some part from the books and others were not. I do not think he found the books wrong. I don't think there are any errors in the books. At any rate we came out only \$35,000.00 apart. The real estate will not make up that in four or five years. If he had not assumed that increase in value of real estate, our difference would have been \$70,000.00 instead of \$35,000.00. It would have just taken us that much further apart.

The Traffic Expense is less per call for us than for the Keystone Telephone Company. The Keystone had in 1918, 39,262 telephones, and the average calls per month were 114. This also shows the total per months for all stations, it is 4,483,461. That is the total number of local exchange messages during the month. I would have to figure it out to tell how many there were here. It was an average of 9 per station of 26,500 stations averaged about 26 days per month. Houston has more than twice as many calls per station as the Keystone Company does. The total cost of Traffic operation for the Keystone in 1918 was \$418,000.00,—that was for Houston, and for the Keystone \$268,000.00. Upon that showing the Keystone per call would not be the cheaper. I think it figures out that the 1854 two are close together, but I think that Houston is somewhat greater.

The statement that has been furnished you of the value of the toll lines at \$8,602,000.00 is not correct, that is only the toll lines and does not include the toll right of way and does not include the toll switch-boards. The switch boards are carried in the local exchange, but you asked about the value of the toll property, and switch-boards are carried in the local exchange property account. That amount does not include the right of way. The right of way could have been included in that. It is carried as a total account, the right of way is, but there is a division on the books which could have been obtained. That is an omission that could have been added to that.

Redirect examination.

(Questions by Mr. J. D. Frank:)

I have referred to having appeared before the Missouri Public Service Commission with reference to working capital. I have appeared before the commission a number of times and have appeared before it in a case in which I put in this 25% toll allowance to local exchanges. They have accepted that in every case I 1855 have appeared in, I understand. In fact, I know that in the

St. Louis case, which was before them from 1913 to 1916, that they did not accept the 25%. They took the 25% as we have figured it and added to it approximately \$10,000.00. They did that because there are a great many toll calls out of St. Louis to the suburban districts the rate on such calls is 5 cents, and they felt that allowing only 25% of these 5 cent calls was not giving a sufficient credit to the local exchange, so therefore they added \$10,000.00 to the 25%. That was for the City of St. Louis.

The depreciation on the toll lines within the City limits and depreciation on toll central office equipment in the City of Houston is not charged to Houston. That \$360,000.00 which I used was determined by Mr. Hoag from his figures and his figures did not indicate the central office equipment and no part of the toll property.

With reference to the reserve for depreciation. In order to earn a reserve you must first have a certain amount over and above a fair return. Houston has not earned any reserve for depreciation; as far back as 1916 it has not made a fair return; therefore it has not made any reserve. Replacements have been made in Houston whenever they were needed and therefore Houston has been getting the 1856 benefit of this common put fund that Mr. Howard has been talking about.

1857 J. C. KELSEY, a witness for the defendant, being duly sworn, testified as follows:

Direct examination.

(Questions by Mr. W. A. Howard:)

I have made an investigation of the Houston Telephone property. With reference to the scope of my investigation, as soon as I came I

got in touch with Mr. Lyndon, read all of his reports, I especially wanted the Company's case in 1914. I prepared here a statement of what I found; Mr. Lyndon has got all of the stuff we based it on. It is the first sheet of a summary attached, and it is based on the 1919 report, the actual receipts.

"Mr. D. A. Frank: I don't see how he has laid the basis for the introduction of any such testimony in the absence of anything that is in the records so far. It will be hearsay on hearsay. Of 1858 course, I understand the Master will receive the testimony but I want to reserve a formal objection to the testimony coming in, which, on the face of it, nothing that this witness knows, of his own personal knowledge, and by his own admission, is nothing but hearsay based on hearsay. Mr. Kelsey, from whose figures did you make investigation, Mr. Lyndon's, or the Company's?"

"A. I based this calculation entirely on the Company's figures."

I got the Company's figures from a statement, I think Mr. Lyndon can give us that and show you an exact copy of it.

1859 LAMAR LYNDON, a witness for the defendant, testified as follows:

Direct examination.

(Questions by Mr. W. J. Howard:)

"Mr. Howard: For the certain purpose of laying the predicate, I want to have this understanding with you. I am not putting Mr. Lyndon on the stand now about the valuation, or to go into details, except to verify the figures Mr. Kelsey took as the basis. Mr. Kelsey, will you just let Mr. Lyndon take the stand for a moment?"

This is my 1914 Report. I made a valuation of this for the Company in 1914, by the reproduction, less depreciation method. I took the Bell Company's inventory as of 1914, and I applied to that certain unit prices and material costs, unit cost and material prices. I am sure of that.

With reference to procuring the unit cost and material prices, in a number of instances, we accepted unit cost and a good many of the prices were submitted to us by the Bell Company as correct. In other instances, where they seemed to be too high, we ob- 1860 tained such quotations from various sources and used those quotations, properly loaded, as a substitute for the Bell figures in those particular instances.

"Mr. Duls: That is a 1914 Report made by Mr. Lyndon on the properties of the Telephone Company in Houston?"

"Mr. Howard: Yes."

"Mr. Duls: Submitted to the City Council."

"Mr. J. D. Frank: It is entitled: 'Report on Telephone Service and Rate, the City of Houston, Honorable Ben Cempbell, Mayor,' and

the further mark (at the bottom), 'Lamar Lyndon, Consulting Engineer, New York, Henry E. Elrod, Consulting Engineer, Dallas.' "

"Mr. Howard: To qualify this, I don't care to put it in evidence at this time."

I did not make any valuation based upon the Company's costs and material prices, but the Company submitted to us a valuation of its own at the time, based upon its own unit price and unit cost.

"Q. Own unit prices, and own inventories. Do you know what figure that they arrived at?"

"Mr. D. A. Frank: I object to that on the ground that it is immaterial and irrelevant what may have been tendered to Mr. Lyndon in an investigation of that kind in 1914, would throw no light 1861 to this Court on the question before this Court at this time, which is the present valuation of this property at the present time, and I object to it on that grounds."

It is one step in the——

"The Master (interrupting): The objection is overruled."

"Mr. D. A. Frank: Your Honor will note our exception."

"The Master: Yes."

"Q. The valuation was placed upon that property, upon the reproduction method at that time?"

(Mr. D. A. Frank:)

"Q. Before you answer that question I want to ask you: Did the Company make a valuation at all upon the reproduction method?"

"A. The very complete record that was handed to us indicates to my mind that they certainly did."

"Q. The record of what?"

"A. The record of the books, the record of unit prices and costs, which were handed to us by somebody, I don't know his name, but some accredited official of the Bell Company."

1862 "Mr. D. A. Frank (interrupting): I object to the words "accredited official."

"A. Well, some person who claimed to be connected with the Bell Company, and who claimed to have the inside of the Bell Company."

"Q. Now, Mr. Lyndon, you have been on the stand often enough to know that the Company would not be bound by such a statement as you are making. Please confine yourself exactly to the facts and don't be telling what a person said."

"A. From 1914, to 1920, my memory doesn't carry the specific individual."

"Q. Tell the Court the report that you made."

(By Mr. Howard, interrupting:)

"Q. Just a moment, Mr. Lyndon, do you know that the official, or man, who handed you those figures, was at the time in the employ and acting for the Southwestern Telephone and Telegraph Company?"

"A. I was surely under that impression or I wouldn't have put in some fifty pages as the valuation of the Bell Company, as a portion of a period report."

"Q. You got that information from the Company used by them at that time, after obtaining the data for your report?"

"A. Yes, sir."

(By Mr. D. A. Frank:)

"Q. Did it have a full set up of a reproduction case just like we have got in the present suit?"

1863 "A. It has, and that's from a portion of this record which you have just inquired about."

It has a full set up, going value, working capital, tools, and things of that kind. I believe there is no intangible set up. As to what I mean by "intangible," I think there is no going value, or cost of establishing business; neither of these. It is a complete valuation of the physical properties; there is very little imaginary in it, mostly all physical property. The total reproduction value in 1914, as we found it, \$2,480,935.00; as we found it. As the Southwestern Telegraph and Telephone Company set it up and gave it to us, and have repeatedly referred to this valuation in their allocation, we assumed—the allocation of annual charges, we assumed that what they meant was \$2,326,940.00. This was the value new and undepreciated up to the end of 1913. It included no 1914 values. The report was made during 1914, and therefore, our records terminate on December 31st, 1913. It was the reproduction value of the property new.

The Company, at that time, used the same addition charges; they said that in addition there were certain overhead charges that were necessary to be added, which their method of construction required, amounting to \$345,271.00. I did not misquote the Company just now when I said this figure of \$2,326,940.00 was reproduction.

1864 "Mr. D. A. Frank: I think in fairness, Mr. Lyndon ought to confine himself to the facts, and not conclusions."

"Mr. Howard: He has taken the reproduction method of applying your unit cost and unit prices as you set them up and then later on he says that he arrives at a certain figure. Then he says later you asserted a certain overhead charge and then added and given you credit for that."

"Mr. D. A. Frank: You know enough about a rate case to know that the Bell Company never in this world set up a figure for the physical value, the total reproduction of the physical value, of the property new, without the overhead. If Mr. Lyndon doesn't know it, you knew it."

"A. (continued). May I read the last quotation from this report made in 1914, when we had no quarrel with the Bell Company, and when I suggested at the time that the rates were proper and should not be changed?"

"Q. Yes, read it."

"Mr. D. A. Frank: I think the report speaks for itself. It is in evidence."

"A. The Company's inventory shows the total cost of the physical properties, including real estate to be \$3,326,940.00, exclusive of these addition charges."

(By Mr. D. A. Frank:)

"Q. \$3,000,000.00?"

1865 "A. \$2,000,000.00, I beg your pardon, \$2,326,940.00. Let me start above that quotation. 'All the foregoing figures are meant to represent actual physical cost of Purchase of Properties, Purchase of Apparatus and Supplies, Labor and Overhead Expense, but they do not include the items of Engineering, Errors and Omissions, Interest, Taxes and Insurance, during construction, and other minor charges. The Company's inventory shows the total cost of the physical properties, including Real Estate and Buildings, to be \$2,226,940.00 exclusive of the addition charges. According to the Company's computations, the total amount of all the addition charges, properly applied to the different items, amount to \$345,271.00, giving as the total physical value of the plant \$2,672,211.00. The complete tabulated statement of these additions to cost or file.'"

That did not include part of what was known as the "Old Home Telephone Company" in use. That was prior to the purchase of the Old Home Company.

At the time this report was made, a report was made on the property of the Home Company, which was then a going concern, at least, it was then in operation and the property was valued and the valuation was based on a series of agreed figures between the Home Company and ourselves. We practically agreed upon every figure at the time and the figures were mostly made up of actual cost, 1866 plus overhead. We found the total cost of the property, or rather the total value of the property, exclusive of intangibles, which is to say, the total physical value of the property new, \$725,123.00, at that time, with an accrued depreciation of \$59,950.00, which left as the then value in 1914, \$665,173.00. This is the 1914 report on all the Telephone properties in Houston, including the Home Telephone Company.

"Mr. D. A. Frank: We renew our objection to his testimony about his finding with the Home Telephone Company, because we cannot be bound by any agreement he made with the Home Telephone Company."

"The Master: Certainly not. Objection is overruled, however."

"Mr. D. A. Frank: Note our exception."

I do not mean to say that there was an agreement that I made with the Home Telephone Company. Whenever we arrived at figures, we discussed them with the engineer of the Home Telephone Company, at that time, Gngh,—G-n-g-h, and with possibly one or two other officials. Of course, these details are cloudy, after six years, but I remember that we went over the subject with proper officials of the Home Telephone Company and there was no objection on their part to the figures we reached. Some time there would be suggestions from two sides, and what I meant, when I said "we reached an agreement" was there was no differences between us of a substantial nature on the value of each item of the property. In that we made no agreement with the Telephone Company.

"Mr. D. A. Frank: Your Honor can see how remote that is."

"The Master: Yes, sir."

"Mr. D. A. Frank: Are you making this witness a general witness?"

"Mr. Howard: No, I just wanted to see what data he turned over to Mr. Kelsey."

"Mr. D. A. Frank: Why not have him state what data he turned over to Mr. Kelsey and assume that that is the data that he turned over to him and let him go on?"

"Mr. Howard: I just wanted to get this."

"Q. From those statements and the way you arrived at that opinion, did you determine the value of the entire physical properties of this company, including the Old Home Telephone Company's properties?"

"Mr. D. A. Frank: I object to that without this witness being qualified, and laying the proper predicate for it, because we wouldn't want to be bound by that sort of testimony. If he wants to state what he told Mr. Kelsey, and what he turned over to him, I have no objection to that at all."

"Mr. Howard: If The Court please, these hearings are necessarily not conducted on the same line as a trespass to try title suit where you have to file your suit and give notice and if you don't do it——"

"Mr. D. A. Frank (interrupting): I am not going to be technical at all, Mr. Howard."

"Mr. Howard: He speaks about the remoteness of this character of testimony. We are trying to get primarily at these values. We have a witness here that valued these properties even prior to the time the Southwestern Telephone Company bought it, and he ascertained from the owners of the Company at that time what they considered and treated as a value of the reproduction. That is very strong evidence of value. While they are not bound by any agreement, they are bound by evidentiary facts. This is the way to get values, by going and talking to the owners of the properties at that time. This man, together with the owners of the property, are not objecting to the values placed on it."

"Mr. D. A. Frank: You overlooked the fact that you are merely laying the predicate for some other testimony."

"Mr. Howard: That is all."

1869 "Mr. D. A. Frank: At the same time, you are arguing to have this evidence in here on valuation. Now, if you could confine your testimony to laying a predicate for Mr. Kelsey to testify, I haven't any objection, but if you are trying to make a valuation witness out of this man, I want you to qualify him. Just show by him what he turned over to Mr. Kelsey, I haven't any objection to that,—no objection to him saying it."

"Q. Now, Mr. Lyndon, you did at a later period obtain from the Company the actual plant investment and additional capital from 1914 up to date, did you not?"

"A. I had Ernst & Ernst request it and some papers came which purported to be that."

"Q. Well, you requested it and it was delivered to you and it was delivered by Ernst & Ernst as a statement of their addition?"

"A. I assume so. It was done at some other place."

Yes, I got it and worked on it; I accepted it. I know it is true but I cannot testify that it is true because I didn't see them hand it to Ernst & Ernst. I turned that data over to Mr. Kelsey and he examined that.

(By the plaintiff:) That is, I turned the data over to Mr. Kelsey that I had had turned over to me by Ernst & Ernst, and told him that it had been furnished me by Ernst & Ernst.

"Mr. Howard: Are you gentlemen going to take the stand that these were not proper figures?"

1870 "Mr. D. A. Frank: Not at all. I merely wanted to know what it is you are putting in there."

"Mr. Howard: Will you question the authority of Ernst & Ernst?"

"Mr. D. A. Frank: I have not; I merely asked him how he got it."

1871 J. C. KELSEY, a witness for the defendant, testified as follows:

Cross-examination.

(Questions by Mr. D. A. Frank:)

I did not testify in the Enid case that \$5.50 per station was about right for the depreciation reserve in that case, it was \$4.00, Mr. Frank. In those days the operating expenses were about \$13.00 and I added to it \$4.00, which made \$17.00 and at that time we agreed on about 10% on the \$100.00 valuation at that time, that made \$1,700.00.

I remember the Chairman come right out, he said, "How much does it cost to feed a steer a month?" In other words, what does it cost to run this telephone a month?" I said, two twenty-five. That surprised Mr. Chipley, if you recall the details. I did not tell Mr. Chipley anything in that case. Chipley wouldn't let me go on the stand. I got on the train before I come to Guthrie. Mr. Chipley

was afraid I might spill the rate-making beans, or something. We went over to the hotel and made a study of the property. I said, "It is costing you about \$13,000,000.00 to maintain this plant, but it is hidden reserve in here. I think you are entitled to \$4.00." So that made \$17.00.

I did not, in that case, agree that 7% for depreciation—
1872 never in my life agreed on an elemental proposition,—never agreed on the 7% proposition in the Enid Case.

By the way, that testimony, I would like to read it. My report was \$13.00 for the expenses, actually had, plus \$4.00, plus 10% on the actual cost of building that property at that time, which was \$100.00 per station by some curious prank.

"Q. The official report of it shows that the question was asked you: 'Mr. Kelsey, this Company has prepared its rate of depreciation at seven per cent per year. Should lines live fourteen or fifteen years, would that be a fair figure?' A. I think, in view of having so much property exposed to the elements of the prairies of Oklahoma, that a basis of fourteen or fifteen years is just about fair and equitable to both parties.' Do you recall that?"

"A. Yes, sir, I also recall that was 1909, wasn't it? We have had fourteen years since that time."

"Q. I am only talking about that."

"A. I am very glad to have this. I understand there wasn't any record of my testimony down there. I am glad to know it exists."

"Q. It exists."

"A. Now, let's have it all. We all learn something in 14
1873 years' telephone operation."

"Q. The next question asked you: 'Mr. Kelsey, it is the evidence before this Commission that the limits of the depreciation which must be provided for in consideration of the wear and tear and calamities and other conditions, I would like to know if you concur in that?' And your answer: 'If you add the word 'rust,' I would agree with you thoroughly.' That's *is* on page 468 of your testimony in that case?"

"A. That was, and the date was what, Mr. Frank?"

"Q. The date was——"

"A. (Interrupting.) 1906, wasn't it?"

"Q. No, sir, it was July, 1908."

"A. Yes, 1908,—that is 12 years ago."

"Q. July, 1908, was the date of the appeal."

"A. Oh, yes, before that, it was. My impression was it was 1906."

"Q. The suspending bond was made May 25, 1908. The case was filed on February 4, 1908."

"A. Yes, it might have been about that time. I don't remember."

1874 "Q. It was between February 4th, and sometime in May.

Do you remember this question, also, Mr. Kelsey, asked by Mr. Chipley? 'Mr. Kelsey, what would you consider the average life of a telephone plant in this section of the country?' A. So far there seems to be two general changes, I do not refer particularly to Oklahoma. There seems to be two general changes in twenty-five

years. On that basis, it looks like our general depreciation fund would be eight per cent but there is always something to be saved out of the wreck, and eight per cent is rather high, in fact, we have quit going on percentages altogether. We like to fix a definite sum per station, which simplifies matters, it is easy to explain to bankers, it is easy to explain to stockholders; it is a detailed matter so that at any time you may know the exact cost of any month or quarter or year.

A. That sounds familiar.

Q. That sounds familiar, does it?

A. Yes, sir.

Q. That is on page 467 of your testimony.

A. Now, how long,—by the way, there has been no change in 35 years. Now, we have had two cycles in thirty-seven and one-half years.

Q. Now, on page 466 of the same record, you say: "We put a safe average upon each station per year. In the Keystone Telephone Company we decided that \$4.00 per station per year was sufficient and reasonable reserve to take care of all maintenance and 1875 take care of the plant. That was completely underground.

Now, we have determined that a plant that is underground down town and all cable overhead in the outer part should set aside \$4.50 per station per year. For the plant that is wholly overhead and all cable, we have determined from averages that it should be \$5.00 per year. A plant of loose and careless construction, lines and wires, open and indifferently constructed, \$5.50 per year."

A. We allow you \$5.62.

Q. Well, I am just taking your record here.

A. That is fine. I am awful glad to have that read.

Q. You said you only allowed \$4.00 in the Enid case?

A. Yes.

Q. You actually allowed \$5.50?

A. Where is the table I filed?

Q. Your table is not here.

A. Well, it ought to be, \$13.00 plus \$4.00. Come across with my exhibit there.

Q. Your exhibit is not in here, Mr. Kelsey.

A. Oh well then, I would love to see that old exhibit again. \$13.00 was the average cost of everything and I gave them \$4.00 on top of it. Then I gave them 10% on the property in Oklahoma at that time.

Q. But you agreed with your counsel that 7% was a fair figure.

A. Well, it might have been at that time, yes. In the light of information that we have since had—that's the trouble what 1876 might happen. I would much rather be in a position of knowing what will happen than to say what has happened. We were all experimenting there.

Q. It is possible, Mr. Kelsey, for you as an engineer to take some life tables and calculate what a possible life would be for the plant?

A. It is possible to make any study of figures. You can make a study. You can give opinions. I am sick and tired of opinions. I

have had engineers say that a pole lasted so and so. He doesn't know. He doesn't know, but I do know what it cost.

Q. But you are undertaking here to give an opinion without any—

A. (Interrupting.) I haven't given any opinion.

Q. Haven't you given an opinion about the reserve depreciation?

A. No, no, I give you the difference. I am assuming that the total average is \$11.00 and whatever is left is yours. We don't want to cheat you on that. We come in here and say that is all it cost you to run but you are doing so well, I said there must be \$5.62.

Q. You have got \$11.00 that you arrived at about 15 years ago?

A. No, no, this morning, we were going through this thing and find it is, gosh, it is getting less,—I am so used to this informal business. I have been ruined by this informal business, and I don't want to be disrespectful.

The Master: Go ahead.

1877 The Witness: I love to talk about this proposition.

Q. Now, you arrive at the figure as you said, 15 years ago.

A. And I see no reason to change it the way the thing looks. I am going to lower it some day.

Q. You arrived at that from the experience of the Bell Company?

A. Oh, I took a summation of everybody. I took everybody's figures added them up.

Q. Didn't you state that the Bell Company had used \$11.00?

A. I think so, that is in there.

Q. And for that reason you had used four?

A. Oh, no, I am studying the Bell Reports, in my studies and their performances,—I found a long time ago that this \$11.00 was a magic figure. That magic \$11.00 I never found a plant anywhere in the world that was running any higher than that. When you get underground, get all these modern substantial buildings and everything up, it is going to be less.

Q. Mr. Kelsey, the \$11.00 that you speak of is an average figure for the entire United States, isn't it?

A. Oh, it is an average figure based on my study of every plant that I have ever tackled. If you will look there you will find that one year, I wrote the story of about forty or fifty independent telephone companies. You don't like that \$4.00. Your company never did. When I say "you" I am talking about your boss.

1878 Q. Well, I have no "boss." That is a matter of opinion. Now, that is an average figure for the entire United States, isn't it?

A. At that time I made up my mind that there was a maximum for any telephone subscriber in the United States. It was an average based on experience and all of my studies and analyses of a telephone system, accounting of expenses, up to date, I never found a greater thing than \$11.00. Not necessarily an average. It might be called an average but when I applied this to any property in the United States you can't show me more than \$11.00 and I will give you a medal if you can.

Q. Mr. Kelsey, I notice in your set up you didn't have anything for the cost of establishing business.

A. Oh, yes.

Q. Do you believe in cost of establishing business?

A. I accepted your figures as a maximum, and your \$2,600,000.00 includes everything. These are 1914 figures.

Q. August 1st, 1914, have you something there to show what those figures are?

A. I got them from the City Engineer's Report.

Q. And what figure did you use?

A. Why, you have got it in my exhibit. Two million.

Q. Well, have you a detail of it there?

A. Mr. Lyndon, I suppose, will come along and give you the details there.

1879 Q. You have a statement here.

The Master: I think that is a copy of it.

Q. Yes, sir, you have a statement here on the first page of your exhibit "Value of property, 1914" \$2,672,211.00."

A. That was given to me as your reproduction value at that time. It was my understanding that contained something for cost of establishing business, included all your overhead. If that did not include anything for the cost of establishing business, I would not necessarily want to take that in. I do not believe that there necessarily ought to be something for cost of establishing business; I believe that is about the fair average. In a growing concern, such as you have here, it does not cost anything to attach business,—not very much. It costs about \$5.00 to get the average subscriber.

Q. How much does it cost, \$5.00?

A. Oh, you have a training school that is charged in your regular bills.

Q. Does it cost anything?

A. Yes.

Q. Does it cost \$68.00 to operate it?

A. That is a continuous performance. That is another immortal idea. You are always educating your girls in a school.

Q. Just answer the question: Does it cost anything? Never mind how it is paid.

1880 A. Of course, there is some expense in getting a girl up to the board, yes.

Q. Does it cost anything for the rest of the Organization?

A. Oh, a little, yes.

Q. If you had a brand new plant here and started out without an Organization,—

A. (Interrupting.) Oh, you can't conceive that proposition.

Q. Would you have to spend any money for an Organization?

A. Oh, no.

Q. You wouldn't have to spend money for that at all?

A. There would be some, of course, but you far fetch the proposition.

Q. Would you have to spend any money for subscribers that came to your office to subscribe?

A. That is in your historical study. If we approach this proposition around through the other way, you will have all that.

I saw Mr. Lyndon's version of your 1914 Report. In other words, I take the version given to me by Mr. Lyndon; I have no time to take anything else, and didn't even look at the 1914 report.

Mr. Howard: Are you disputing this report prepared in 1914?

Mr. D. A. Frank: It is very apparent that I am disputing it. This is a fair inference, from what I have said.

1881 Mr. Howard: Are you disputing the material prices and unit costs they set up in 1914, and are you disputing the inventory that they set up in 1914, and are you now asking for going concerns to be added where you have paid those very charges out of operating expenses? Is that what you are getting at?

Mr. D. A. Frank: If you will just be patient, I will have this witness answer the question before I answer your question.

As far as attaching an Organization, you would not have over \$130,000.00 in that to save your life. But there is the wrong construction, man. I am making a composite study of it. That is one instance. We could even concede you cost of establishing business, but yet on the other hand, we have this historical study in here. I have got the historical study since 1914.

Q. Is that the historical study, this figure you just referred to?

A. That is supposed to be your figure for reproduction new. There is no depreciation in that.

Q. You have just told me that that figure includes cost of establishing business.

A. That is my understanding, and I got it from the City's expert.

Q. And is that what you were told?

A. I got it from his report.

1882 Q. If our Appraisal showed the following items: "Physical Telephone Plant, \$2,672,211.00; Miscellaneous Property, \$64,789.00; Working Capital, \$73,556.00; Cost of Establishing Business, \$562,111.00, a total of \$3,372,667.00" as shown by our Report, to which you have referred, made August 1st, 1914; if that is a fact, then you haven't been furnished with the correct figures, have you?

A. Finish your statement; what is your depreciated condition there? Tell me that first.

Q. I am merely taking the figures that you use.

A. I know but—

Q. (Interrupting.) You weren't furnished with the other figures?

A. I didn't put those in my figures, my starting figures, and comparative figures. They are not without depreciation.

Q. I haven't hit here.

A. Well, get it.

Q. But you have left out \$700,000.00?

A. Yes, and I have left out of my figures all your depreciation value, new.

Q. You have just made a statement that this figure included the Cost of Establishing business?

A. That is my understanding,—the Two Million,—what is it?

Q. Two Million, Six Hundred Seventy-Two Thousand, Two Hundred and Eleven.

A. It is my understanding—

Q. (Interrupting.) And you went on that assumption in fixing this Exhibit?

1883 A. Why certainly I did.

Q. You thought you were getting say, something for Cost of Establishing Business?

A. Not necessarily.

Q. You thought that figures was in there?

A. There is a lot of bunk in these exhibits. That is a very clever invention.

Q. I am not talking about the theory. I am talking about your figures.

A. I don't concede anything until we get to it.

Q. What do you mean when you stated you had included the Cost of Establishing business?

A. I didn't say that. I said that was the Company's valuation given to me by the City's Engineer.

Q. But you said it included the cost of establishing business?

A. I take it back then; I assumed that it contained all the reasonable items. I am taking your figures to show a maximum range in this proposition.

Q. But you didn't take our figures?

A. No, apparently not. In that first exhibit that I used, you said it wasn't yours at all. You said there were original marks on it that showed to have been yours but yet you agreed it was yours. Give me the depreciated per cent of your plant.

Q. I haven't got it.

A. Well, I want it.

Q. Didn't you state yesterday that no Telephone Plant was under 92% condition?

A. Well, you don't need an expert in this case. I came in 1884 here as an outsider, and I found—You had already and I accepted an Inventory of 1914, and accepted your figures, and then added what you put in, and I thought, well, this certainly is a nice composite.

Q. But you thought that you had a real composite, didn't you?

A. And if I wanted to come in here, I wouldn't have taken your figures, if I wanted to come down here and deceive the Court and Commission I could have taken a lower figure, but in order to be fair, I came in here and took your figures, but you don't mention that depreciated condition of your plant. Tell me what that is.

Q. I am discussing your figures,—the figures that you set up.

A. I didn't try to mislead the Court, and I am giving them to you as your figures.

Q. You thought they contained the figures but they didn't.

A. And they looked pretty close to the truth. Bring in your full Company Report, less depreciation, and we will——

Q. (Interrupting.) Did you have any idea that this contained "Miscellaneous Property" and "Working Capital"?

A. That is no question at all. I asked for the Company's figures for 1914, by their own inventory.

Q. And knowing the Bell System of setting up such things, you thought everything was in?

A. No, I didn't think anything about it. I merely asked for the Company's figures for 1914. You are putting in things today that you didn't put in fourteen years ago.

Q. We are learning all the time.

A. You bet you are. When I come in here, I merely 1885 asked the City Expert what was the Company's figures in 1914. He handed them to me. I said, I am in a hurry. I

said, "What have they spent since that time?"

Q. Well Lyndon evidently thought——

Mr. Howard (interrupting): You can prove that by Mr. Lyndon.

Mr. D. A. Frank: Never mind now. This man is on Cross-examination.

Mr. Howard: Mr. Lyndon testified yesterday as to what the base was that Mr. Kelsey picked up and added these additions to, and he testified to Physical Property only. Now, if you have got Going Concern and Cost of Establishing Business, and things of that kind that you want to add——

Mr. D. A. Frank (interrupting): Mr. Howard, I call your attention to the fact that this gentleman is an Expert, and as an Expert, he, of course, knows that his opinion carries weight with the Court. His opinion, if relied upon, might be the means of cutting down several hundred thousand dollars off the valuation of the Company.

Mr. Howard (interrupting): He could not for this reason: He says that he has taken it from company figures. Mr. Lyndon testified that he got those figures of the Physical Property from figures furnished him by the Company, and that they amounted to so much.

Then Mr. Kelsey says that he took those, of course, as found 1886 by Mr. Lyndon and has supplemented those figures by the additions to Plant since 1914, and that those things combined shows certain values.

Mr. D. A. Frank: This witness has stated several times that he took the Company's own reproduction figures as of August 1, 1914, and didn't even subtract anything for depreciation.

A. I believe that.

Q. You believe that, and you are honest in it, and we admit that you are. Therefore, the figures that you set up here need to be corrected by the addition of something for Cost of Establishing Business?

A. It may be partially.

Q. And Miscellaneous Property. You didn't allow anything for Teams and Tools?

A. Oh, yes, unquestionably. Prove that by the other witness. You know I came into this case in a hurry. I didn't have monthly reports.

Q. Now, the monthly reports would have been of the entire Company?

A. I know, but if I had seen those, I would have tried——

Q. (Interrupting.) You know you weren't under any compulsion to go on the stand when you did?

A. I know, but I can go on long enough to lay the foundation. What we are after is the truth. Now, put all your Cost of Establishing business in there and then tell me what the engineers 1887 found by inspection was the value of your property at that time.

Q. Your figures, if the figures given you by Mr. Lyndon included nothing except the Physical Telephone Plant and didn't have anything for Office Furniture & Fixtures, didn't have anything for General Store Equipment, or Teams and Vehicles, Tools, or Supplies, or Working Capital, or Cost of Establishing Business, oughtn't there be some change in your figures to account for those items?

A. I would love to have that complete statement of your valuation less depreciation, and I will tell you the fact.

Q. Just answer my question.

A. I have answered it.

Q. Should there or should there not be a correction in your figures on that account?

A. Oh, I expect to make a correction in two or three figures, before I get done.

Q. I want the question answered.

The Master: Just answer the question.

Q. Oughtn't those figures to be corrected by the addition of those items?

A. Every figure is subject to correction.

Q. You haven't answered my question. Wouldn't it be easier for you to say that this figure ought to be corrected?

A. Well, I don't know, from some of your questions.

Q. You haven't answered my question yet. I hate to be insistent.

1888 A. An Irishman don't know how to answer the question.

Q. The question is simply this: If certain items which I have detailed were not included by Mr. Lyndon in giving you the Appraisal of the property as of August 1, 1914, and you have based your figures on the bare physical plant, shouldn't your figures be corrected to show that?

A. Why, yes.

(By Mr. Howard:)

Q. And these were erroneously admitted, you don't claim they should be added unless they were properly——

A. (Interrupting.) Why no, I want to study those figures.

The Master: He said yes.

Q. He said yes.

Mr. Howard: Now, Mr. Frank, just so we won't be proceeding along wrong theories, to get at that, we should know that he has taken for the base of his computations certain figures which he says were furnished to him as figures of the Company, showing the Physical Values of this plant, and you say it has omitted Office Furniture and Equipment, Tools, and things like that, we ought to know it.

Mr. D. A. Frank: Mr. Lyndon knows it.

Mr. Howard: Did you omit Office Furniture & Fixtures and Tools? I thought you made that clear that you based your reproduction upon figures furnished to you by them in 1914.

Mr. D. A. Frank: We will go on while Mr. Lyndon looks 1889 at it.

Mr. Kelsey: Can I excuse the witness and suggest to you, Judge, that we ought to have that total sheet that entire exhibit, less depreciation. I am not trying to deceive the Court, or deceive the case. We have to have what we have. I want all that.

Mr. Howard: Now, Mr. Frank, we found this list here that Mr. Kelsey used and furnished by Mr. Lyndon. We would like to have it in the record. (Reading): Real Estate Buildings, Central Office Equipment, Substations, Pole-Lines, Aerial Cables, Aerial Wires, Underground Conduits, Underground Cables, Furniture & Fixtures, Supplies in Stock, Tools, Teams & Vehicles.

Mr. D. A. Frank: What are you reading from, Mr. Howard?

Mr. Howard: I am reading from the statement of the Physical Properties upon this Reproduction of 1914.

Mr. D. A. Frank: Whose statement is it?

Mr. Howard: I understand *were these* furnished to you, were they?

Mr. Lyndon: Those were the reproduction figures which I made at the time, and the reproduction figures which the Company submitted covered these same items.

(By Mr. D. A. Frank:)

Q. Then this entire statement is founded on Mr. Lyndon's 1890 report, then, Mr. Kelsey?

A. Well, I am not a judge of that matter at all. You give me your report and I—

Q. (Interrupting.) You have worked only on the figures which Mr. Lyndon gave you—

A. (Interrupting.) Merely from information—my information was this was the Company's report for the 1914 inventory.

Q. So that this is not as happy a situation as you have assumed?

A. I am not at all discouraged about it. I have granted you that, that we had a happy situation in this town—

(By Mr. Howard:)

Q. Just a moment, Mr. Kelsey, these figures that were got in there—did you get those figures?

A. No, I left them there with you, Judge.

Q. Well, I don't want them, Mr. Kelsey. If you will let Mr. Kelsey know what the figures are that you have got, and what they included, just state what page that is on in that report, because that has been offered in evidence.

Mr. Lyndon: The list of items is on page 183, of the 1914 Report of Lyndon & Elrod, on Telephone Service and Rates in the City of Houston; also the Lyndon and Elrod valuation of those items is given on Page 183; the Company's valuation of those same items is given on Page 183.

(By Mr. D. A. Frank:)

Q. Is that a Company Report?

A. No, it is——

Mr. Howard (interrupting): It was testified by Mr. Lyndon yesterday that he is showing in there the *the* figures that he 1891 applied, that he got from competitive prices, and there is also a set up on the prices furnished by the company on that date and he shows both those things.

Mr. D. A. Frank: We are not talking about any of those things at all, Mr. Kelsey.

Mr. Howard: You are asking the witness; you are trying to make it appear that the basis of this witness' computations are incorrect.

Mr. D. A. Frank: They are incorrect.

Mr. Howard: Now, we are saying that they include only the Physical Properties, but they do include all the Physical Properties, and as shown by your figures furnished to the engineer, Lyndon, at that time. Now, we want to get that statement as a basis of this computation, that the Company's inventory shows the total cost.

Mr. D. A. Frank: Now, you are reading from——

Mr. Howard: I am reading from page 299 of Mr. Lyndon's Report furnished this witness, upon which he bases his figures.

Mr. D. A. Frank: That's the idea.

Mr. Howard: 299 of the Lyndon Report of 1914, isn't it, Mr. Lyndon?

Mr. Lyndon: Yes.

1892 Mr. Howard: The Company's inventory shows the total cost of Physical Properties, including Real Estate and Buildings, to be Two Million, Three Hundred and Twenty-six Thousand Nine Hundred and Forty Dollars, exclusive of these additional charges. Now, the additional charges are referred to in the preceding paragraph, and they consist of the Actual Physical Cost of the Purchased Property, Purchase of Apparatus and Supplies, and Labor and Overhead Expenses, but they don't include the items of Engineering, Errors and Omissions, Interest and Taxes, Interest dur-

ing construction and other minor charges. Now, according to the Company's computations, the total amount of all these additional charges properly applied to the different items amounts to \$345,271.00, giving as the total Physical Value of the plant, \$2,672,211.00.

Mr. D. A. Frank: Just exactly what I said.

Mr. Howard: All right.

Mr. D. A. Frank: Nothing for the Cost of Establishing Business?

Mr. Howard: Nothing for the Cost of Establishing Business, that is conceded.

Mr. D. A. Frank: Nothing for Miscellaneous Property and nothing for Working Capital?

Mr. Howard: Nothing for what?

Mr. D. A. Frank: Miscellaneous Property.

1893 Mr. Howard: I don't know whether you have got any of that or not.

Mr. D. A. Frank: That is just Physical Telephone Property.

(By Mr. D. A. Frank:)

Q. So that, if that Report shows Seven Hundred Thousand Dollars more, at least, Mr. Kelsey, it was a Report that wasn't submitted to you?

A. I would like to see the Report.

Q. Well, it wasn't submitted to you.

A. I haven't seen, as you say, your Company's Report. I want to see it with your deductions for depreciations.

Q. That is a different proposition. We have your Exhibit here that you are dealing with and the Court has the right not to be experimented with.

A. That may be true, but when you haven't the weapons to work with——

Mr. Howard: We are not experimenting. We put in the figures in a segregated manner. We are not contending that they include a lot of intangibles that you are claiming.

Q. Mr. Kelsey, a reproduction figure for plant would have to be a reproduction of the plant and attached business, wouldn't it?

A. Well, assumed for the moment, yes.

1894 Q. Well, let's not assume it; isn't it a fact?

A. Yes, the reproduction figure is quite true.

Q. You have added to that for some——

A. (Interrupting.) Oh, yes, for some of the cost.

Q. You answered Colonel Chipley, in the Enid Case, on page 469, where he says: "I will ask you, Mr. Kelsey, whether or not you speak of a reproduction which would include the reproduction value of the plant as a going concern?" And you answered that is correct.

A. Going concerns are worth more than standing concerns.

Q. You would answer yes, to that question now, wouldn't you?

A. Yes, as a reasonable Cost of the Business.

Q. So that the figure that you have for total of the property on page 1 of your Exhibit, would have to be revised, wouldn't it, Mr. Kelsey?

A. I expected to. I told you there were some items in that that I only temporarily used in the first place, I warned you and the Court too, that there were temporary figures in there.

Mr. Howard: He has allowed that 4½% that he says too that he thinks should be revised.

A. Yes, temporarily.

Mr. Howard: That hasn't got anything to do with that, but it has something to do with his figures.

A. I can straighten this situation out very readily and 1895 quickly.

Q. Do you know where you got these figures? Do you know what figures these are that you have at the top of the page, of page 1, of your Exhibit, where you say "Exchange Rental, \$880,-439.28?"

A. That is in your Exhibit.

Q. You are trying to find out something by this set-up, aren't you?

A. Yes, what the Company took in during the year,—what they spent during the year.

Q. You are trying to find out what the Company spent and what it took in during 1919, so that you could tell what it would take in and what it would spend in 1920, aren't you?

A. No, I am not interested at all in what happens in 1920.

Q. Aren't you interested at all in what the Company's income would be under the present rates?

A. I am not considering that at all.

I had this set-up, because it was the only one within my reach to analyze. The Court would be interested in hearing what the Company took in last year, because that is what they took in under the rates, under the existing conditions. As to why the Court would be interested in it unless it wanted to find out what would be produced in the coming year isn't the issue at all. It is reasonable to assume that if the Company made a profit, that the next year they would. I was not informed that the conditions were the same; there has been a change. I would not assume that the conditions 1896 have been the same in 1919 that they would be in 1920,—not at all. I know that this \$880,000.00 of Exchange Rental was produced by a rate which was in effect which was materially higher than the rate that is now in effect; that is subject to correction in there.

If the deduction would amount to something like \$250,000.00 per year, my total net down here under Receipts Applicable to Dividends would not also have to be cut down, you could average that out; it would not have to be changed in that respect. I don't think your rate would amount to \$250,000.00. I do not know how much it would amount to, in the light of information—we have got to come in here and ask you for it. I did not undertake to enlighten

the Court; I said these were temporary figures, and warned this Court and you of that, because I didn't have the books.

All of my testimony is not temporary testimony, it is leading to the facts; all we ask you for is the facts. When I get different facts, my testimony would not be different, facts is facts. If you were denied a rate the latter part of the year and you don't get it, this year, of course, that is subject to adjustment. I was not told what the rates are. I don't know anything about the rates. I didn't even inquire into the rates. I analyzed this sheet when it was given to me. I am perfectly satisfied that those figures are just about right.

Q. Even though the Exchange Rental here may be too high?

1897 A. Oh, no, I am not talking about the earnings, Mr. Frank. I am talking about the Value of the Plant. There is a question mark about your earnings in there.

Q. What is your idea about confiscation?

Mr. Howard: I would like at this time, so that the Court will understand the purposes of this exhibit; Your Honor will recall it was stated by Mr. Kelsey it was put in here merely as illustrative. Now, he has got a certain thing in here $4\frac{1}{2}\%$. He said he thought that was subject to change. Now, it may appear here in adding up the revenue for 1919 that the revenues are somewhat out of the ordinary on account of the fact that the Company collected a higher rate for the part of the year. Now, this is put in as illustrative largely of his manner of handling the proposition and carries it on down to certain computations there for the purpose of showing that they had the knowledge that he thought he was entitled to have as to what the entire earnings of the Company were, not the entire earnings, but entire investment and plant values, so that he could make the proper apportionment in regard to the Long Distance toll lines. A part of this should be added to the Plant value that he set up and illustrates how it would be arrived at upon that basis, with the statement that individual items here, many of them and perhaps all of them, may be subject to change, but only illustrative of the contention that he is making, that this toll situation should be handled in a different way than the Company is undertaking to handle.

1898 Mr. J. D. Frank: He is not undertaking to testify as to the value of the property then.

Mr. Howard: Oh, yes, this thing Mr. Frank is talking about now, has nothing to do with the value of the property. He is talking to him about the rate, and about the operating expenses, and about the gross income. He had told you all he knows about the value, that he took certain figures that were set up as Company figures, so stated to him to be Company figures, in 1914, showing a certain Physical Value of this Plant, including Stores & Supplies, and many other things, and that he has added to that the additions since that time, and he said that is a good composite,—a fair evidence of the value of the Plant. That part is very clear.

Mr. Duls: He admits he hasn't got all the figures in there.

Mr. Howard: He states that he has all the Physical Plant Values. Now, as to whether you all can come on and tack on a Million or Two Million of intangibles and things that are distinguishable from Physical Values, is a further question that is not undertaken to be covered by this illustration, illustrative set-up that he has set up here.

Mr. D. A. Frank: This is just an experiment?

Mr. Howard: It is just what I said it is. If you followed me——

1899 Mr. D. A. Frank (interrupting): It is not necessary to state it over.

Mr. Howard: That is illustrative of the manner in which this proposition should be handled, that in addition to the Plant Values, as they exist here and what you term the Local Exchange, there should be added the proportionate part of the toll investment, which would swell the values. He don't undertake to give you a value there complete. It is only the value that has been set up by you and he proposes to add more to that in the way of Physical Property, in the way of Toll Lines, and he proposes further that he should receive the earnings of that Toll Line in their proper proportion and he has put that in as merely illustrative of the manner of handling and as many of these items here, like the $4\frac{1}{2}\%$ he says that is questionable whether you should be allowed that.

* * * * *

Mr. Howard: I haven't talked to you with any idea of arousing your antagonism. I am talking to you with the thought that maybe you would pursue this inquiry when it is told to you that this illustrative exhibit is not, and does not, purport to be sustained as an actual proven fact.

Mr. D. A. Frank: Are you through?

Mr. Howard: Well, you may go on for two hours, but I 1900 don't think it should be followed up.

Q. Mr. Kelsey, you are on the stand, did you at that time think this was a temporary exhibit?

A. Yes, I propose to have a final exhibit.

Q. You didn't state that on Direct Examination?

A. I made it plain all the way through in this case that I had certain things lacking in this case that I missed, and when I get done my last Exhibit will be——

Q. (Interrupting.) You have only one blank on this page.

A. Two blanks.

Q. Well, you have got two blanks. One is the total or a toll value?

A. Toll value and the percentage, the only question applied is whether the value of Four Million, that is confiscation or not.

Q. That is the question I want to repeat, just tell me your idea of how confiscation enters into it, what is your idea of confiscation?

A. If a valuation of anything under Four Million is put on your property, I would be inclined to think you are losing something.

Q. Well, Mr. Kelsey, I just wanted to get your idea for the record.

Is it your idea that the question of confiscation depends on the question of valuation put on it by the Court?

A. My idea of confiscation is whether or not you lose a nickle in the transaction of your actual investment.

1901 Q. But, Mr. Kelsey, we are not going to lose the place, are we?

A. No, no.

Q. Then the real question of confiscation is the question of how much we get for rates?

A. No, no, that comes in later, when I give you my final in this proposition. I can't give you a final proposition until I get all the stuff to analyze it with. You come at me and try to show that your production value of 1919 was higher than it was after I got it, less depreciation. I am willing to answer it.

* * * * *

Q. (Interrupting.) I just wanted your opinion. You are acting as a lawyer and I wanted to know your opinion. Now, your Exchange Rental of \$880,000.00, as you say, is the figure for 1919?

A. You kept that money didn't you? That is the money you took in.

Q. I am not arguing with you.

A. I am not arguing. That is a question. Did they keep the money that was the Income for that year?

Q. That was the Income for the year 1919?

A. Yes.

Q. Now, in order to assist this Court to find what the present rates would produce, you couldn't use that figure, could you?

1902 A. I propose before I get through with this case to have a figure in here that will show the Court what I think.

Q. Answer the question.

A. I have.

Q. It wouldn't be fair to use that figure, would it?

A. What is the question?

Q. (The question was thereupon read to the witness.)

A. No.

* * * * *

Q. If this amount is incorrect, then you are going to assume—

A. (Interrupting.) You and I can talk a week on this.

Q. I think we can, but we wont. Now, the second item is \$441,029.60 that is the Commissions?

A. That is your Receipts of going into the Southwestern points. If you have got any Tolls in there that don't go to the Southwestern points, or go to Texas, you have got a right to deduct those. How could we tell?

Q. How could we tell?

A. You keep the books and you have got the momey in your pockets all the time.

Q. You took the total figures?

A. No, no, I have the 25% of course.

Q. You know how much of this went to the Telephone Companies with which we connected in the State of Texas?

A. I can soon find out. That is the money that you got and when I get to your books—

1903 Q. (Interrupting.) Do you know how much has gone?

A. (Interrupting.) I don't know anything about it. How can I tell this Court, or anybody else? Guess at your books? The Southwestern business you originate in this town belongs to this town.

Q. How does it belong to this town, Mr. Kelsey.

A. Because all the business which originates in Dallas Exchange belongs to Dallas.

Q. Well, now, give us the authority for that statement.

A. That is my authority.

Q. You are the authority?

A. Yes, what else?

Q. Is there any Court or Commission in the world that has ever decided with you on that proposition?

A. I don't know.

* * * * *

Q. Now, Mr. Kelsey, let's assume, let's make another assumption here. Let's assume that this \$880,000.00 is a correct figure for Exchange Rental and that \$440,000.00 of toll, that would be just half as much, wouldn't it, for toll, as for Exchange?

A. Yes.

Q. And you want to put the two together and say that that is the amount of money that is applicable to the Houston Exchange?

A. Yes, that's the receipts of Houston.

Q. That's the receipts of Houston. Now, in order to find the property that this is applicable to, you would have to take
1904 all of the Exchange property in the City of Houston and a certain proportion of the Toll Property in the entire state?

A. Yes.

Q. That is true, isn't it?

A. That is.

Q. How would you proportion the toll property in the State?

A. Well, I am going to have composite—I have got to study your pro rata of the expense you have got loaded in Houston. You have got Houston loaded with practically \$120,000.00 of expenses here that I don't know what it is.

Q. Are you going to divide it on the basis of Expense?

A. Not yet. I am going to wait and see. Not until I see the books.

Q. Are you going to wait and see what result you are going to get before you decide?

A. No, I haven't yet. I never fool myself that way.

Q. Name some of the ways in which you might divide the Toll Property of the State.

A. You show me the books. You don't know how, I don't know

how I am going to take care of the proportion until I make a study of this situation.

Q. Now, let's see, Mr. Kelsey, you could divide the toll property of the State on the basis of the proportionate part of the entire property as found by loading the Houston Exchange property with all the property in the State, couldn't you?

A. Oh, I presume so.

Q. Now, you could divide it on the basis of the proportion
1905 of the entire expenses in the State as compared with the entire expenses in the City of Houston, could you?

A. Well, it could be, I suppose.

Q. Now, there are four different ways of dividing and allocating the Toll Property in this State, to the City of Houston, which one of those do you intend to follow?

A. I don't know.

Mr. Howard: Why don't you get him those Reports that he asked for?

Mr. D. A. Frank: He doesn't have to have a Report to answer a question.

Mr. Howard: I think he is entitled to it. He has asked for them.

A. (continued). Show me the books.

Q. Does your answer depend,—does your system depend on what the answer would be?

A. I want to know on what basis you do all your allocating. Then I am going to—I don't propose at this time to say what I am going to do about that allocation.

Q. Can you tell the Court at this time what would be a fair way of—

A. (Interrupting.) No.

Q. Now, Mr. Kelsey, have you ever done this anywhere else?

A. I presume so; I don't remember.

Q. Why, Mr. Kelsey, is it possible that an Expert like you wouldn't remember having done so important a thing as this
1906 in another case?

A. Well, it may be. I am pretty busy, you know, and I don't keep all those things in my mind. You dig up records here that I had forgotten,—that I didn't know existed. I wish you would refresh me on those things.

Q. As a matter of fact, you have seen 25% of the total Tolls allowed to the Exchange, that has been customary everywhere?

A. Oh, yes, they make a contract between themselves, you know.

Q. That has been customary for twenty years, hasn't it?

A. Not necessarily. Here's the theory, as I told you before: When we first went into the Telephone Business, the man who originated took 25%, the man who terminated took 10, and the fellow between, they had the mileage division.

Q. The 35% that you are talking about was where one or both owned some of the tolls?

A. It doesn't matter who owns it.

Q. Some owned some toll lines?

A. Not necessarily. Pretty nearly everybody wanted their own toll lines.

Q. Well, let's take a parallel case to this, and take a case where a company operating a local exchange is doing a long distance business with another line; now 25% to the exchange is a usual and customary thing?

A. 10% of the incoming would be the old arrangement.

Q. 10% of the incoming and 25—

A. (Interrupting.) No, no, the Bell Company began to connect up with these Companies and they were so glad to do it—

Q. (Interrupting.) What do you mean by saying they 1907 were so glad to connect with them?

A. Getting the long distance connection. They thought it was—

Q. (Interrupting.) Does it make any difference anyway?

A. No.

Q. Is it worth anything at all to a local exchange?

A. No, it is a liability, almost.

Q. A liability?

A. Yes, sir.

Q. Have you always been of that opinion?

A. Absolutely.

Q. How many lines are there around Houston, do you know?

A. No.

Q. Would you be surprised if I were to say that there were fifty lines going out of Houston?

A. I wouldn't be surprised. Judging from the pay-roll, you have got a number of lines here.

Q. Suppose there were one hundred and forty, would that be about right?

A. I don't know.

Q. There are 17 railroads, and there are usually lines running out the railroads. It wouldn't be out of reason to say there are 30 lines running out of Houston?

A. I can't give you any idea until I know. I don't know your business at all.

Q. Let's assume that there were 30 lines running out of Houston would it hurt the Local Exchange to have one of those lines cut out?

A. Well, not on the 25% basis. They are losing money 1908 on that proposition as it stands.

Q. Would it hurt the exchange to have half of them cut out?

A. They would probably make more money by losing them under those contracts. You are speaking now of the benefits of the toll, are you? Are you going to argue that long distance is a—

Q. (Interrupting.) Would it hurt the Local Exchange to have all the long distance lines cut?

A. Well, I don't think it would hurt it materially, because 97% of the calls, as a rule, are handled around right in center.

Q. Don't you know that a lot of people wouldn't take local service unless they had long distance lines?

A. No.

Q. Don't you know that in building up an exchange of 27,000 stations that necessarily a great many people wouldn't have taken—

A. (Interrupting.) You can't conceive of a situation whereby a man wants the long distance telephone and not the local connections. Look here, communities with a thousand grew up without any toll lines. The Duluth Telephone Company got along well without the long distance lines, and Minneapolis and Saint Paul.

Q. Mr. Kelsey, suppose we had some lines out of here, from here to Beaumont,—you know where Beaumont is, don't you,—pretty good little town over in East Texas?

A. I suppose so.

1909 Q. Now, suppose that was owned by the Texas Long Distance Company, and they were to cut off connection entirely with our exchange here, and we had a contract, wouldn't we be damaged by cutting off those lines?

A. Well, you got many a toll line which is an independent company.

Q. That don't answer my question: Wouldn't we be damaged?

A. Not on a 25% basis. You would probably save money.

Q. Probably save money on the basis of 25%?

A. Yes, it is costing this property, the time you count every item that goes into it, a good deal more.

Q. Couldn't you undertake to value what we would lose on a contract of that kind?

A. No.

Q. Wouldn't you undertake to say what the line to Beaumont would be worth from this exchange?

A. You are not dealing with a philanthropic proposition. You are dealing with actual figures.

Q. I am asking you as a telephone expert, you couldn't undertake to value the services that we would lose by having the lines cut from here to Beaumont?

A. You wouldn't lose anything. It would be convenient to some people. They use the telegraph. It is better sometimes. The cry of no toll lines has been one of the factors of independent life, and I never did find that it hurts any.

Q. Have you always been of the opinion that the long distance lines wouldn't add anything to the value of the local exchange?

A. Why certainly not. Why would they?

1910 Q. Well, I am asking you, Mr. Kelsey.

A. It is the local exchange that add value to the toll lines. What toll lines would be worth 5 cents that terminate at a jack rabbit hole, or what is Houston worth as a terminal,—what is Dallas worth as a terminal? Your terminals make the toll lines. Your toll lines don't make the terminals.

Q. I want to be fair with you, Mr. Kelsey.

A. You have got to be.

Q. Haven't you been of the opinion that the toll line was worth a great deal to the local exchange?

A. No, I never knew that you were philanthropic in your Charter.

Q. I am not talking about me. I am talking about the Telephone Plants.

A. I am talking about your company.

Q. Haven't you been of the opinion that the connection with the long distance lines is very valuable to your local exchange?

A. Take the Peoples; licked the life out of us and we had all the toll lines and they didn't have any.

Q. What year was that?

A. That was 1898. You will find an awful story. Minneapolis Tri-State licked the Northwestern Indianapolis and didn't have any long distance lines to Chicago.

Q. You are perfectly sure of that?

A. Yes, the only reason I had to build a long distance line from Fargo to Glendive was to connect up and make our terminals worth something, that make the toll lines as much as it does.

Q. If there were competing exchanges and the two exchanges were trying to get as many toll subscribers as possible, 1911 wouldn't the one that had the long distance connections get the greatest amount of business?

A. That has never been demonstrated.

Q. Haven't you ever attempted to demonstrate it?

A. Oh, yes.

Q. Have you ever testified to it in any case?

A. I don't know. You seem to have a lot of records here. Spring them.

Q. Mr. Kelsey, you stated positively that you have never testified that it was worth anything to a local exchange to have a long distance connection?

A. Oh, not positively. I insist that that is my opinion.

Q. That is your opinion. You remember the case of the Memphis Telephone Company against the Southwestern Telegraph and Telephone Company?

A. Yes, where they cut the lines.

Q. You remember that case?

A. Yes.

Q. Just to refresh your memory, in order to keep from reading some from the record to get the facts before you, that was a case in which the Memphis Telephone Company built a line 28 miles long out of Memphis for a connection with a little independent telephone company that operated up in Arkansas,—up into the Mississippi River Bottoms?

A. That was the Osceola?

Q. Osceola Company?

A. Yes.

Q. The line cost \$8,800.00, and a contract was made between the Memphis Telephone Company and the Osceola Company, and the Southwestern Company,—this same Company that's here in this present case?

A. Oh, no, no, the Cumberland.

Q. No, sir, I beg your pardon, it was the Southwestern Telegraph and Telephone Company.

A. It was Leland Hume that cut the wires,—Leland Hume's people.

Q. But the Southwestern Company purchased the Osceola?

A. From a man named Ross.

Q. The line cost \$8,800.00, the line was cut, it consisted of one circuit of copper wire and one circuit of iron wire. You testified as a witness for the Memphis Telephone Company, the contract provided for a twenty-five year connection, and provided that for the use of this twenty-eight miles of long distance circuit and the operating of the local in Memphis, the Memphis Telephone Company would get 17½% of the total tolls out of Memphis. You testified in that case on behalf of the Memphis Telephone Company that the gross business that would be done over that line for a period of twenty-five years would be \$883,500.00 and that 17½% of that would amount to \$154,612.50, and that the business could be handled for one-third, which would leave a profit to the Memphis Telephone Company of \$111,875.00?

A. That is the Memphis Long Distance, isn't it?

Q. No, the Memphis Telephone Company.

A. No, that was a separate—

Q. It was a local telephone company.

A. I remember the case, but that was a separate line,
1913 jointly owned by Ross and by Short, they called the Memphis Long Distance.

Q. This particular Plaintiff in this case was a local telephone company and not the Memphis Long Distance Company.

A. Yes, I think they owned the stock in that little concern, though.

Q. You remember the case, do you?

A. Not clearly, what year was it?

Q. This was July 23, 1912. Now, Mr. Kelsey, while you were testifying you made this statement:

"I feel that there is another item here that is more or less just; it isn't so large. It's the loss in revenue due to subscribers that this company can't get owing to that loss of service. It's possible that the Home Company can get a telephone in a business house, but it gives the Bell Company the advantage of all the P. B. X Service and makes the travelingmen and their representatives more or less lean to the Bell Company or companies that they—

Q. What do you mean by P. B. X service?

A. That's the telephone scattered throughout the business houses.

Mr. Chipley: Private Branch Exchange.

Witness: Private Branch Exchange. It gives them that advantage. I have estimated that on a more or less progressive scale, based on growth of telephone business. The growth has been tremendous all the way through, and I have divided that into five periods. The first period of five years, a loss of business service average 50 telephones at \$54.00; 50 residence telephones at \$30.00; making a total the first five years—I mean the—making a
1914 total per year of \$4,200.00. Now, then, from my experience, and from the experience here, they can operate their rental

stations for about 50%. That leaves a net loss to this Company of \$2,100.00 a year, for the first five years, or, \$10,500.00. The second epoch, five to ten years, I figure on an average 75 business telephones and 75 residence telephones. That totals \$6,275.00. Half of that is net, \$3, 1—let's see. Five years (figures) that would be a loss the second epoch of \$15,637.00. The third period I figure 100 business telephones—the equivalent of 100, and 100 residences, making a total of \$8,400.00; 50% would be \$4,200; for a period of five years would be \$21,000. The fourth period, I figure 125,—the equivalent of 125 business phones, and 125 residence, making a total actual loss of \$10,500.00. That would be a net loss of \$5,250.00 a year or, for the period, \$26,150.00. I have made no change for the fifth period, leaving it \$26,150.00. That makes a total of \$99,487.00.

Q. That is for the whole 25 year period?

A. Yes, for rental losses."

Now, Mr. Kelsey, that was your testimony in the Memphis case, was it?

A. Read further Mr. Chipley's suggestion there that the figures don't lie, but liars can figure.

Q. Just find it.

A. Well, it probably didn't go in the record. Well, what was the decision in that case? What was the damage finally given? Enlighten the Court, clear on through.

Q. That was your answer. That was your testimony in that case?

A. In that case, yes, that was a local issue.

1915 Q. And there you testified to \$250,000.00 damages for cutting off that particular line.

A. A very bitter fight on at that time. There's a local condition that aggravated that thing clear through.

Q. This was your testimony in the case, was it?

A. All this based on local issue.

Q. Do you change your testimony on account of the issue in the case?

A. Well, every telephone problem has its local issues.

Q. You change your opinion——

A. Not opinion at all. Here was a little town where these two companies jointly owned those lines. The Cumberland Company cut those wires. This was uncalled for. There was a reason for that. The Southwestern was not in that case so much.

Q. You testified and the Plaintiff testified that the Company was damaged \$250,000.00 by cutting off two of the toll lines?

A. That's all right. Suppose you cut off Beaumont. You lose your tolls, don't you?

Q. That would average \$10,000.00 per year, wouldn't it?

A. Yes.

Q. And that would be \$5,000.00 per line?

A. Yes.

Q. Now, if there are 30 lines entering or coming into Houston on your testimony in the Memphis case, the local exchange would be damaged \$600,000.00 a year?

A. You go on the 100% theory?

Q. No, on the 17½% theory, weren't they?

A. That is on mileage. There is no question but what if
1916 we cut out the Beaumont and additional lines, you would lose the total revenue that you have got there.

Q. The Memphis Telephone Company in that case had 3,000 telephones in Memphis, didn't they?

A. Yes.

Q. It also owned 28 miles out?

A. Of this important line.

Q. Of this important line. The cutting of that line deprived the Memphis Telephone Company of two things?

A. The revenue. It deprived you in this town.

Q. Of the toll revenue, and also the additional local revenue that they would get in order to talk to that part of Arkansas?

A. Yes, that is true.

Q. That is what you testified?

A. That looks reasonable.

Q. That looks reasonable. Now, a little line to a sparsely settled portion of Arkansas—

A. (Interrupting.) No, that was a profitable line. That was one of the most miraculous—

Q. (Interrupting.) You didn't know it, but I tried the case and I carried the case up?

A. Yes, it went on up.

Q. Have you a curiosity to know what the Court found?

A. Yes, that is what I would like to know.

Q. You testified that the damage would be \$250,000.00?

A. Yes, and what did the Court find?

Q. The Court found \$3,300.00. That was about 1% right.
1917 Your figures were about 98% wrong.

Mr. Howard: The Court practically held just the opposite of what you are contending here.

A. If you cut the long distance lines out of this town, you certainly would lose the revenue, and you would make less of local revenue. You are not charged for anything you lost. Are you trying to ascribe that the long distance lines, of course, threw a loss to the town; and it wouldn't appear in your statement either, would it?

Mr. Howard: If you would continue to cut these long distance lines, it would destroy the exchange.

Mr. D. A. Frank: I am not on the stand. This gentleman is on the stand and he is an expert.

Q. You testified there in a little exchange of 3,000 stations that the cutting of two long distance lines coming in there would damage that property at the rate of Four Thousand Dollars a year?

A. There was a line that was shooting through messages awful swift and fast. Why not enlighten us completely on how much that was. It is a loss.

Q. Your statement was it would produce \$880,000.00 in the 25 years, and that 17½% of that would go to the local exchange?

A. I knew, but all that is reflected in your annual reports and in your books, and what you take in and what you don't take in.

1918 Q. \$883,500.00.

A. If you didn't take that in, you wouldn't take it in, Mr. Frank. What's that got to do with this case?

Q. You divided the damages between the loss of tolls, loss of local exchange revenue, didn't you?

A. Yes, that was a very natural thing to do, they were losing.

Q. In the course of 25 years, you contended that there would be \$250,000.00 damages?

A. There would be that much deflection in earning. If you didn't have any long distance lines here you wouldn't have any earnings in your sheet at all.

Q. You did divide the damages in that case, didn't you?

A. That was 8 years ago. You know I have learned a lot about terminal values since then. We all have.

Q. You are prepared to change your ideas now?

A. We changed our ideas about warfare about 30 days after the German warfare, didn't we?

Q. I have no quarrel with anybody.

A. That bears on this proposition. Of course, if you did cut the toll lines, you would lose the revenue.

Q. You would lose what revenue?

A. The toll revenue.

Mr. Howard: Just a minute. I want to understand what we are talking about. Is the contention here that all this loss came from toll revenues? Is there any testimony in here that any subscriber would discontinue because they couldn't get the long distance lines?

1919 Mr. D. A. Frank: Mr. Kelsey is testifying, and he said it wasn't worth a dollar to the local exchange to be connected with long distance lines.

Mr. Howard: After you read all that stuff into the record, then it turns out that they are testifying entirely about toll lines.

Mr. D. A. Frank: Not only is your statement inaccurate but it has a very vital applicability to the facts in this case.

Q. Didn't you get that about the loss of those stations?

A. Well, if they lost those stations, they would lose the revenue and—

Q. (Interrupting.) You testified in that case?

A. Well, I presume I did. You seem to have the goods on me.

Q. Your lost subscribers and your lost revenue, what has that got to do with this case?

Q. You testified in that case—

A. (Interrupting.) If you are trying to make out that the toll lines are of value, you are creating an opinion proposition.

Q. You testified in that case that it was worth \$95,000.00 deflection of local earnings of toll, because of the fact that they didn't have connection with some sparsely settled towns in Arkansas. There was two of those lines, and you allocated \$99,000.00 in 25 years. That would be Two Thousand Dollars.

A. For what?

1920 Q. For loss of exchange revenue.

A. Well, that appears in their annual statement, doesn't it? Why don't you—what you don't earn, you don't put on your books.

Q. Your testimony was that the local exchange would lose that much local revenue?

A. Why certainly. We might lose it. What has that got to do with this case. We have got an actual record of the money taken in and if we lost the Beaumont line and the Galveston line, and the chances are that next year these fellows might take their line out, and we might lose the revenue. If you don't take it in, I don't know how the dickens you can be credited with it.

Q. Has this city a high development rate?

A. I understand 10% is very good.

Q. It is more than 10% here.

A. Up North, those towns have one-fourth, between one-fourth and one-fifth.

Q. If they have 27,000 subscribers and there is 160,000 people, that would be pretty good development?

A. Well, you have a lot of colored people here.

Q. That would tend to cut it down.

* * * * *

Q. Well, suppose we wanted to hire a man and he made us
1921 a price of engineering a plant, and we made it six per cent, would you say that is reasonable?

A. You are not making the witness a proposition?

Q. No, you—

A. (Interrupting.) It all depends on how large the engineer was, how much he needed the business. Those prices are competitive, just like anything else.

Q. If he made a price of six per cent, would you consider that reasonable?

A. Well, he would do pretty well on that.

(By the Master:)

Q. What is the answer, Mr. Kelsey, is it, or is it not reasonable?

A. Well. I presume it is, Judge. The intent of his question is this: All these engineering conditions are taken on what the engineer is willing to do it for.

Q. I understand, but in your judgment it's reasonable or unreasonable?

A. If he could get six per cent he would have a nice contract. If you want to follow that down according to size, if it is not a large plant, he would have to scale down his percentage, if he has a large plant, he would have—

Q. (Interrupting.) It is owing to the size of the job?

A. What is the use of arguing? Not with you, Judge, but six per cent, is what they all like to get, if they can.

Q. Well, you referred to your testimony in the Birmingham case, and I just noticed in there a question was asked you, "What about engineering?" And you answered, "Six per cent engineering is put on there, on the basis that the average engineer's fee is six per cent."

A. Well?

Q. That is fair isn't it? That's fair, isn't it?

A. It looks all right.

Q. Now, what would a consulting engineer on a plant, if you were starting a plant and had to have a consulting engineer, what fee would be proper?

A. I don't know. I have never charged any fee. In our business we had to help all these fellows for nothing in order to sell them the switch-board.

Q. Well, now, you have known as high as fifteen per cent being paid?

A. I never heard of it.

Q. Well, Mr. Kelsey, you be sure now.

A. Well, you have got the record. You remind me if I am wrong and I will admit it if I am.

Q. You say you never heard of a fee of fifteen per cent, being charged?

A. Not that I know of.

Q. Have you ever testified there was a fee of 15% charged?

A. I don't recall. Let me have it and see what it was. I didn't know I was in a memory contest.

Q. You aren't, Mr. Kelsey.

Mr. Howard: Are you contending here, Mr. Frank, that you paid any such prices or that you paid six per cent outside?

Mr. D. A. Frank: I want to show the reasonableness of our engineering fees, and this gentleman is an expert on it.

Q. In the Enid Case, you testified to 10% for an engineering fee and on cross-examination, when you were asked by the Attorney General of Oklahoma, how much was that consulting Engineer's work, didn't you answer: "Mr. Ledley, St. Louis, charged 15% for engineer's services?"

A. In what?

Q. I don't know.

A. I don't know myself. I heard that Ledley was in the concern.

Q. So that you have heard of some engineer charging 15%?

A. Is there anything in this record that I have disputed any six per cent?

Q. Well, I just asked you if you had heard of as high as 15%?

A. Well, to be sure I have heard, but I had forgotten that I had heard.

Q. Are you contending that on large plants it would be larger than on small plants?

A. Certainly. Mr. Ledley is so great an engineer that he can command his own price. Mr. Ledley served a kind of German in-

terest there, the Annheuser-Busch outfit, and he is a very lordly engineer. I must admit that he has no monuments left that 1924 are a great credit to him that I know of.

Q. What was the matter, the prices too high?

A. I don't know. In this case, I haven't laid the foundation for six per cent.

Q. You think six per cent would be reasonable?

A. I don't know. According to the size and the condition of the plant, I think it would be pretty high, pretty fat fee, especially of your reproduction value, that would be \$48,000.00, that would be pretty nice.

* * * * *

Q. In the Memphis Telephone Company case you testified and it was borne out by all the witnesses' testimony in the case, that the average call was 50 cents that were passing over that line, and that the Memphis Telephone Company would get $17\frac{1}{2}\%$ for the use of its local exchange, and 28 miles of long distance wire. Now, that would be $8\frac{3}{4}\text{¢}$ per call, would it?

A. Yes.

Q. Now, you testified also that the cost of handling long distance business would be a third of that?

A. $33\frac{1}{3}\%$ for originating expense that would make it $2\frac{11}{12}$ cents. I am glad you referred to this because in the North Dakota

Independent Telephone Company, after a few years we found 1925 out for the first time in history that in the long distance business it costs about $\frac{1}{3}$ to operate and the rest of it—now here is where we own both ends of it, and our operating expense at that time locally was about 50%,—it was the first light I had ever had on that particular cost and since that time by some coincidence, or something these Western Coast Commissioners have said, well, it does look like 35% represents the cost of handling a toll call.

Q. All right; let's get on to this. Now, you testified in that case that one-third of that would be all it would cost to operate, which would be $2\frac{11}{12}\text{¢}$ per call, but in order to be fair, of course, that was an in and out call and it would be twice that much on an originating basis, wouldn't it, or $5\frac{5}{6}$ cents?

A. Your mathematical ability is good beyond question.

Q. Now, you testified in that case that $5\frac{5}{6}\text{¢}$ would, on the basis of originating calls, pay for all the cost for handling the long distance calls that went over those lines didn't you?

A. Yes, the Minnesota Commission has gone further and allowed the little companies 5¢ in and 5¢ out on calls.

Q. Now, would you be surprised to know that when you divide up the number of calls going in and out of Houston, you—a different percentage is being allowed?

A. I wouldn't be surprised at anything, because after all these charges are made, and it goes into the Treasury, whose is it?

1926 Q. Would you be surprised to find that the amount that was allocated to the exchange was $14\frac{9}{10}$ cents per call?

A. I am not surprised at anything.

Q. And you would think, though, that that would not be a sufficient amount to allocate to the Houston Exchange?

A. Oh, yes, I don't care what you allocate to the Houston Exchange, the fact remains there is so much money put through the toll business in this community.

Q. Let's stick to this question, now, Mr. Kelsey in the Arkansas case?

A. That was an externally owned line that we had nothing to do with.

Q. No, sir, it was internally owned.

A. Oh, I don't believe it.

* * * * *

Q. Your testimony here was that one-third of that 8¾ cents was sufficient to pay the cost of handling the business?

A. It might have been in that case. You know the cost of operation in Houston and in Memphis are entirely two different items.

Q. That would be 5 5/6 cents per message?

A. I presume so.

Q. And here it is nearly 15¢ per message. That is 14 and 1927 some cents, 14 9/10¢.

* * * * *

Q. Mr. Kelsey, in your examination of Keystone property, did you find a per cent, condition for that property?

A. At that time it was 90 per cent good.

Mr. Howard: You have been over all that, Mr. Frank. Why should we go over it again? I don't care how far you go, but we have a right to suggest that you don't go over it two or three times.

Q. How did you determine the per cent condition of it?

A. By inspection, the same as you folks.

Q. The same as we do?

A. Why yes, you do it by inspection.

Q. Did you go out and inspect that property and find it in ninety per cent condition?

A. I went out and fooled around and looked it over and I determined that it was 90% good, as a matter of fact, it is awful hard to conceive of a telephone company property that carries on these delicate, minute, currents, with all their difficulties that can be—in fact, I don't see how you can keep a plant, and I don't think the Bell Company ever keeps a plant under 90% efficiency.

1928 Q. You think the Bell Company's plants are usually in good condition, do you?

A. Why they are always in good condition.

Q. You testified with respect to the calling rates in Cleveland; do you remember what was the lowest?

A. 3 8/10, Mr. Frank.

Q. Well, I didn't mean on that basis. How many calls were handled per operator per day?

A. I don't know. You have it there, about 340 or something like that.

Q. Your testimony was that in May it was 268 and in July it was 217?

A. Well, we made a study clear back.

Q. The lowest was 217?

A. Yes, I think that is true.

Q. Now, the figure that you gave here was found by dividing the number of calls per month by 27 working days and that by the total number of operators?

A. In service, yes.

Q. In the service. That was 580. If you hadn't used the average number of operators, it would have reduced the number of operators?

A. I don't know with the scarcity of girls, every girl worked full time, how are you going to have an average? Every girl being used works 10 hours per day.

1929 Q. There would be something like 100 operators working as Long Distance Operators?

A. Thank you for calling attention to the facts, one hundred operators on Tolls in Houston.

Q. I am asking you?

A. No, I am going to investigate it as soon as I get your figures.

Q. Oh, you are?

A. Yes.

Q. Now, there would be somewhere between 400 and 600 calls per day here?

A. I don't know; that is a matter of computation. I am not criticising it.

Q. Well, at any rate, the number of calls per day here is satisfactory in some respects, is it not?

A. No, it is seriously under. It seems to me that the Common Battery system ought to maintain a standard. One girl can handle 225 calls, or my girls in Minneapolis, even in the first year of operation, handled 250 calls per hour without any fatigue.

Q. Do you know of any place now where that is done?

A. It ought to be done. Isn't the girl the same height, and same weight, and same length of arm, that she was in '98?

Q. Do you know of any place where that is being done?

A. Why they ought to do it. Is there any reason why they can't? Same system, same methods, with improved methods, they ought to be swifter.

1930 Q. I am asking you if there is any place where it is being done?

A. Yes.

Q. Where?

A. There must be lots of places. I can't understand why a girl can't do work in this same system that she did when it was new. What in the world has happened in this evolutionary method?

Q. Just where was it you saw 250 calls per hour handled by a girl?

A. Oh, some time, in the busy hours, between 10 and 11, they would handle 260 calls.

Q. What years was that?

A. From 1898 on up.

Q. How did you determine the number of calls?

A. Peg Counts.

Q. You determined that they handled 260 calls per hour?

A. We watched them, of course. We were all interested in this system. That peg system was put in with considerable misgivings. We all feared it, it was a painful thing for a long time.

Q. You don't know of any place anywhere where that has been done?

A. Oh, but I could find out for you.

Q. In Cleveland you made the same observations, you didn't afterwards investigate and found out?

A. It never come to me to find that out. I will find out if I
1931 go to—I can go to the United States Independent Telephone Association Headquarters and get all the peg counts, if you want that.

* * * * *

Q. Do you know that we don't have functional systems in the small towns of Texas?

A. I should think you would not have.

Q. Well, you are criticising something that doesn't exist. They all combined in one. Now, Mr. Kelsey, suppose you tell me you denied the other day as I understand you, that in the Cleveland case, you allocated all the tolls to Cleveland. Now, suppose you tell me exactly what you did in the Cleveland case?

A. You are trying to find out what that case is but I will be very glad to tell you.

Mr. Howard: Tell him again.

Q. Tell me. Judge Howard understands, but I don't. I say, will you tell me?

A. Mr. Frank, is this a physical endurance contest or not?

Q. I supposed it was mental.

A. Well, I am perfectly satisfied to go on a mental test for 30
1932 years, but you know I am not as used to sitting in a chair as you are.

Q. I am trying to get the views, but I really have no levity in this matter at all.

Mr. Howard: It is no levity, when you put a man on here and ask him to detail a thing, then you ask him——

A. You use all this stuff you know. I will be very glad to tell him the theory in the Cleveland case. Apparently you haven't got it yet.

Q. Well?

A. If you have got it, what is the use of giving it to you?

Q. Well, tell me your theory of it, let's go on with the question.

A. When you ask me for the theory of the Cleveland case, what are you asking me for?

Q. I am asking you if it is not a fact that in the Cleveland case in your computation you added in all the tolls originating in the Cleveland territory and claimed that they were properly chargeable and properly creditable to the Cleveland Exchange?

A. You don't understand yet.

Q. Didn't you testify that?

A. No, I did not.

Q. Well, go ahead and explain it.

A. The Cleveland people invited me down to make a study of the Cleveland Telephone Company. I very firmly told them that 1933 the Cleveland Telephone Company wasn't making money.

Q. You told whom?

A. The City Council.

Q. Go ahead.

A. Is that a wonderful confession to make?

Q. Just go and—

A. Oh, well, I am getting tired of this "bunk." I tell you very frankly and I am going to give you a sample of the fire-works I can use. You come down here and ask me to expose my hand in another case. We are going to the Supreme Court in that case, and we are going to make you jump.

Q. I don't want to make you expose your hand. All I want you to do is to tell me what you have already done in the Cleveland case?

A. I said, here the situation is a great deal like the Packers. Now, we know that the Armours are very well-off people. Somehow or other they always make money on meat. But they are always losing money. I said, here the A. T. & T. is a good deal like the Packer in this case. Here is a butcher shop which can be compared to the Cleveland Telephone Company, and they are losing money in that butcher shop, but this same owner, he has a long distance telephone company and he uses butcher shop as a terminal which takes a certain amount of money out of Cleveland. He has a little service charge, he takes a little more out of Cleveland, mind 1934 you, they are both owned by the same thing, then they have another company that takes another amount of money out of the terminal and then they have a great big bunch of unused reserve which they apply to their own capital account, of course, and use it. I said, this case is simply this: The owner of all these properties in Cleveland is making this amount of money which I showed you on the sheet. You remember it?

Q. I remember it.

A. Now, it is a question of how much in the absence of information, he is making on his investment in Cleveland.

Q. Did you arrive at any figures?

A. No, I can't find out yet.

Q. But you left that in expense like you are doing in this case?

A. Well, what else can you do? We are going to make you come clean and bring the books. That is the greatest weakness of the City's case, and always will be, is the lack of facilities, the lack of information. We have got to compel certain information.

Q. So that in that case, although you started out with the proposition that the Cleveland Company was making a little over 1%

when you got through with your figures you had something like 15%?

A. I am not talking about the Cleveland Company. I am talking about the owner, Mr. Frank,—the owner.

Q. All right, the owner, then.

A. The owner had 100% of the stock of the Cleveland 1935 Telephone Company, The Western Electric, Central Union, 100% of the Long Line Company and he used all the reserves himself.

Q. In order to get the 15% gross profits—

A. (Interrupting.) That is what I called it,—the gross profits.

Q. In order to get that you added together—

A. (Interrupting.) The gross income from all the outlying concerns. Not the gross income of the Cleveland.

* * * * *

Q. Mr. Kelsey, in that statement you did state that all these tolls from all the Cleveland District was all profit until the telephone company showed otherwise?

A. Why, I don't know what else it could be. That was perfectly fair to the Company. They could come back and show that there was a profit, or there wasn't. And I would have to abide by it. They wouldn't come across. If the owners are losing money in Cleveland it is up to them to show it. We get to the point where they have a profit in Cleveland,—a gross.

Q. Mr. Kelsey, in general, how many stations must be added to a plant in order to have one?

A. Oh, 4 or 5, some times.

Mr. Howard: In order to have what?

1936 Q. In order to have—

A. (Interrupting.) I might tell you that the cost of removals all over the United States will average about \$1.00 a station.

Q. I understood you to say that you had never made a study of depreciation?

A. Oh, Mr. Frank, say, you are the limit. I didn't study depreciation, for the benefit of financial institutions and bankers in this business for 15 years, and I have written more about that than any man in the world. I have always studied the actual conditions and I am trying to make you come into Court with your actual conditions; come in here with your hands and show us what you actually have. That is the point. I could go along surmising and talking in percentages but say what has the Company done?

Q. What have you done to study actual traffic conditions?

A. Oh, I don't care about that. That got out of my hands. I am no traffic expert. I have a great deal of admiration for a fellow that will fool with it. It is a hard job. It is making girls work and listening to complaints. It is the most disagreeable part of the telephone system and I think the Traffic Manager ought to get more salary than his neighbor.

Q. That would increase the traffic expense, wouldn't it?

A. It might.

Mr. Howard: It might decrease it. A good Traffic Manager might decrease it. We are inclined to think so anyway.

Q. Going back to the exhibit that you put in in the form of City's Exhibit No. 1, this figure that you call Local property value here is not really total local property value?

A. Well, it is from what we know now. You said yesterday we had left out certain costs in our reproduction theory and I want to know what they are when I get down and put my final report in here.

Q. These figures in here are not final, are they?

A. They can't be anything else. I had to come into this Court and lay the foundation for getting something from you by force.

Q. Will you please tell me whether this figure that you have here on your own theory, is a cost figure or reproduction?

A. It is a combination of both, Mr. Frank. You set down an inventory in 1914, and you claim certain values. Since that time the Auditors find that you put in a certain amount of money on top of that.

Q. But you actually have a hybrid without having either?

A. Anything is a hybrid where you have a composite figure. We have a historical value of things which is a hybrid.

Q. If you were undertaking to value this plant as an independent engineer and taking your time for it, Mr. Kelsey, would you or would you not want to see an inventory?

A. Why, I did want to see it and I asked you for it and I got it, the 1914 inventory, and accepted your proposition.

1938 Q. But would you value a piece of property in 1920 on a 1914 inventory?

A. Yes, and so will every Commission in the United States do the same thing. You don't have repeated reproduction.

Q. Does that figure that you give here represent your best judgment of what the fair value of reproducing the property is?

A. Pretty nearly it would, and when I see your figures, then I will come in here and absolutely say what it is.

Q. That is, you think that the present value of the property can be obtained by getting a reproduction figure?

A. At some times in the history of its life.

Q. And adding its addition from that time on?

A. Yes, since.

Q. Since that time? You think that gives you a fair value of the property?

A. That shows pretty nearly all the money you have got in it.

Q. Mr. Kelsey, would it be interesting to you to know that the book cost of this property here is \$4,800,000.00 and some odd hundred thousand dollars?

A. Well, if it is here, it is here. I would like to see it.

Q. Would it be interesting to you to know that four other engi-

neers have testified in this case that the present value of this property is around \$8,000,000.00?

A. There is not one of the engineers that has testified in this case that I would give \$1.00 for their opinions.

1939 Q. They are not competent?

A. Competent for your purpose, but not for mine. You wouldn't have had them here if they hadn't appeared for you.

* * * * *

Q. But this is your idea of what the property costs?

A. And what your investment is. That is, what we are trying to find out in a confiscation suit. You can't take away from a fellow something that he hasn't put into it.

Q. So that when the figures here are finally amended by you it will be what the property finally cost?

A. In justice to you, it takes in all the money you put in since '14, and all the additional money that you might have put in.

* * * * *

Q. Can you define value?

A. No, I am talking to you about the money you have got in this property.

Q. I am talking about value.

A. You might call it value if you are selling. You are not a selling concern.

Q. Do you have to sell anything to have value?

A. You pretty nearly have to.

* * * * *

1940 Q. Is a sale necessary in order to have value, Mr. Kelsey?

A. Yes. It is, yes. The only way we determine market value is by the sales, transfers of property on the Exchange.

Q. How are we trying to determine market values here?

A. We are trying to do something here.

Q. You are trying to determine value, but not market value?

A. You are trying, in other words, to realize your profits in this case?

Q. No, sir, we are trying to find the value of this property.

A. Well, if you were a private concern and not subject to——

Mr. Howard (interrupting): What do you want to find it for?

Mr. D. A. Frank: I am not on the stand, Mr. Howard. I have argued this case with you so much, I don't want to argue it with you now.

Q. We are trying to find the value of the property, Mr. Kelsey.

A. Well, I am trying to find what you actually and reasonably put into it.

Q. So that if the Court is interested in finding the value, you don't concern yourself with that?

A. I am not trying to influence the Court at all.

Q. You are not trying to find the value but you are trying to find the cost?

Mr. Howard: If Your Honor please, he has stated about 25 times that he has taken the inventory of 1914 and has added since 1941 what the additions cost him. Now he can ask him that same question, go back over it 100 times, and that is all there is to it.

Mr. D. A. Frank: All he would have to do is to answer it frankly one time. This is all that would be necessary.

Mr. Howard: He has told you a number of times what he has done. Now, you keep asking him that same thing. He has told you that he is trying to find out what the investment in this plant was and he has told you that he has not approached this thing from a reproduction stand-point, or from the stand-point of taking an inventory of the property and applying the unit prices and material cost and overhead charges. He has told you he has not done that. He has told you just what he has done.

* * * * *

Q. You put down your statement here, Mr. Kelsey, total local property value when you meant total local property cost, didn't you?

A. Well, I put all synonyms down. There is nothing fixed.

Q. You see, Mr. Kelsey, what drags this out is that you never answer a question until you—will you please answer the question as to whether or not within this figure you undertook to set out the present property value here, or whether you merely attempted 1942 to set out the cost?

A. I am telling you that I put a value there that was all correctly written and dictated without a thorough study of all the synonyms and derivatives of the English language. We might go back and prove that that was something else.

Q. You haven't yet answered my question?

A. I intend, eventually, to put down the reasonable amount of money that you folks have put into this property.

Q. So that you haven't undertaken to show what the total value is?

A. The money you put in since 1914, is certainly entitled to some consideration. I think you have a very happy combination of circumstances there myself.

Q. Is it your idea of applying judgment to all the relevant facts to give a figure of reproduction some time and put the additions on there from that time on?

A. Every Commission in the United States has practically ruled that way because you can't expect a company to make a reproduction inventory every 5 years. It would be absurd. When you once set a thing—as long as your system stays standard, why not adopt the theory of once having an inventory and then having your additions, and after that, if the conditions change—

Q. (Interrupting.) Then, as I understand you, your whole exhibit it is an exhibit that is not in any sense final?

A. Well, it couldn't be. I suppose it will be after you let 1943 me have your books.

Q. Now, on page 2 of your Exhibit?

A. (Interrupting.) That is no Exhibit. I put that in there to give you something to shoot at.

Q. It was introduced in evidence.

Mr. Howard: I introduced it in there as illustrative.

A. I wrote that for you, Judge Howard, not necessarily for the case, and for the Judge, if he wants it.

Mr. Howard: As illustrative of the way that he would handle the property but necessarily inaccurate because you haven't furnished information that you say you will furnish.

A. (continued). How in the world could a man come down here, reach here Thursday and come in here in a few days with all the details in this case? Passed through Houston at high speed, it is very evident—

Q. (Interrupting.) I think it is very evident,—very evident that you made these figures on high speed.

Mr. Howard: Just so you don't mislead yourself, if you are honest about it, and so that our minds will meet, this was put in here as an ordinary exhibit of the way Mr. Kelsey claims these propositions should be handled. First, the matter of valuation. He takes 1944 your inventory of 1914, and adds your additions since that time as his method of valuing the plant, as a very proper method of getting at what your real investment is. Then in regard to your receipts, he illustrates just how he would handle the question of your long distance tolls, and which he will complete when he get the books that will bear upon that question. That is the next principal thing that he brings in issue with you upon. The next thing is the matter of Depreciation Reserve. Those are the things which he has upon the \$11.00 per station instead of upon your percentage basis. Now, this illustrates his contention and shows you will notice, at the bottom of the paper, that you call the Exhibit he has stated there "Total Local Property Value" which in the light of his testimony indicates that he means it largely as an investment, but that owing to your receipts you can understand that.

Mr. D. A. Frank: I do understand it now, but I did not understand it until the witness told me.

Mr. Howard: Now, he intends to add to these Local Property Values here, inasmuch as he says the tolls should be handled in the manner he has indicated, the total tolls chargeable to Houston, and that illustrates the method of arriving at the final result, which is inaccurate and temporary only. Another thing that is sub- 1945 ject to change there is that 4½% that he says you are not entitled to, but which he has allowed. Now, that is all those figures indicate. They illustrate the proposition but it is necessary,

before they can be checked and the final computations made, that he should have this information which you have promised to give him.

Mr. D. A. Frank: The words "inaccurate, temporary and illustrative" were not used with reference to these figures until after this witness had been on the stand a day and a half.

Mr. Howard: I thought you grasped that.

Mr. D. A. Frank: We have urged the objection to all this testimony on the ground that it is purely hearsay and based on assumption.

(By Mr. D. A. Frank:)

Q. Mr. Kelsey, at the bottom of page two of this exhibit you say item—the depreciable figure allowable to the Houston district, it covers both local and toll conditions chargeable to Houston—it is \$146,-120.00. Now, I don't care to go over that because you have explained how you arrived at it here; that is, you take \$11.00 per station and take out maintenance and it left this figure.

A. Take out maintenance—take out all maintenance and I would find that you show more. You just read in the record the 1946 reconstruction figures, that I overlooked, and I am going to put in there—it is deferred maintenance,—present maintenance and deferred maintenance are all the same.

Q. The Interstate Commerce Commission makes us call it depreciation.

A. It don't make any difference; it is maintenance in one case and deferred maintenance in the other case.

Q. Now, Mr. Kelsey, this figure of depreciation here is intended by you to cover all the depreciation that will take place in the city of Houston and on the portion of the long distance lines that you intend to allocate to Houston?

A. The reserve part; that has nothing to do with reconstruction that is going on; you have got to charge that it.

Q. Now, Mr. Kelsey, that figure would have been the same if this had not been owned by the same company,—that is, the long distance business, had not been owned by the same company, wouldn't it?

A. Not necessarily.

Q. Wouldn't it have been the same?

A. Not necessarily, because the maintenance figures wouldn't have been the same,—you have got a charge right here for maintaining the toll lines—I know you don't think you have, but when I get your books I will find out how you have got the operators here charges to Houston. That's what I want your books for, Mr. Frank. I think your books are wonderful, but I want to see them.

Q. You had in mind this, without having a sufficient amount to cover this depreciation in this city and all long distance lines?

A. (Interrupting.) Yes, and applied to the company as a whole.

Q. But you don't know how much the total is going to add?

A. I don't know, but I hope to spend the first day at Dallas trying to find out. I know what was found in the Birmingham case.

Q. Mr. Kelsey, in the city of Dallas, the property is now owned by the Dallas Telephone Company—it does not own any long distance lines—

A. (Interrupting.) Who is the Telephone Company?

Q. Well, it's probably owned in proportion of the stockholders of the original company by the independent company and the Southwestern Telephone & Telegraph Company.

A. I didn't know that there was such a company in existence.

Q. Now, that company has no long distance lines so that in making a computation of this account you couldn't allocate any part of the long distance lines to it, could you?

A. Well, you are not charged with any, yet, Mr. Frank.

Q. Now, under your system of setting aside \$11.00 per station you would set aside \$11.00 per station at Dallas just the same as in Houston?

A. Yes, and give you the difference between the actual cost of maintaining that plant and that amount.

Q. And that would be just enough to maintain it and replace it at the proper time?

1948 A. Yes, and always have money.

Q. On Page 4 of your statement, referring to the Keystone Company that pride—

A. (Interrupting.) That's chestnuts.

Q. —that pride of your life, you say that last year the company decided to change to automatic telephone service and it is a matter of interest to say that the company has enough reserve money to pay all charges and have some left.

A. Even a new plant.

Q. Now, Mr. Kelsey, please give us your authority for that statement.

A. You can get that by getting Mr. Stockwell here as a witness in this case and ask him. It is a matter of common knowledge in the telephone business, and in discussion among telephone men, among manufacturers and my clients, that the Keystone was a very unusual concern that could pay its bills.

Q. When you say that company had enough reserve money to pay all charges and have some left over, it is a matter of common knowledge, you say?

A. I mean that, just as I expressed it, exactly.

Q. But, Mr. Kelsey, you have made the statement here, and it is supposed to be sworn to; do you know whether or not it is true?

A. Why, have I committed perjury here? I hope I get out of Texas sometime—before I get 20 years.

Q. I asked you if you know.

1949 A. I told you, and have just said what I know about it.

Q. How much did they have in their reserve for depreciation?

A. I don't know.

Q. How many stations have they?

A. I don't know.

Q. You stated between thirty and forty thousand?

A. I think that's all.

Q. And you say it takes \$60.00 per station?

A. Get Mr. Stockwell, of the Keystone Telephone Company, in this case, and he will supply all missing links in this proposition. If I had known I was to be in this case I might have stopped in Philadelphia a few weeks ago and read up on it.

Q. You haven't seen the books at all?

A. No, it would take a Court order for me to see them—I am only a minority stockholder.

Q. And still you make the statement?

A. From common knowledge among men in the telephone business.

Q. Although it cost a million eight hundred thousand.

A. I think it is a matter of common knowledge among manufacturers — each company—the manufacturers want to know about the credit of each company, some companies are rated good, and some bad, and the Keystone is the best A-1 risk in the business, because they have got the money.

Q. Suppose your statement is accurate and they have just got enough in the reserve to take care of the switchboard and change it to automatic, and there would be a difference between the 1950 actual amount and the amount replaced—if they should happen to have to take down some poles and lines after they had exhausted the fund where would they get the money?

A. Borrow the money, charge it to reserve and pay for it.

Q. Your idea is——

A. (Interrupting.) Sometimes the reserve fund is empty and you create some indebtedness; you never keep the height of the reserves the same.

Q. Your idea is to borrow the money and then amortize it?

A. That is pretty safe as long as conditions are as good as they are here in Houston.

Q. On top of page 5 you have this statement: "But the company has claimed a loss of \$1,274,249.00 for the past four years and has specially asked for \$359,999.00 for 1919." Where did you get that?

A. Apparently from your own figures.

Q. Is that on these figures used here? Who gave you these figures and what do they mean?

A. I guess the city engineer gave me these figures and you gave them to him.

Q. Mr. Lyndon gave them to you?

A. Yes, sir.

Mr. D. A. Frank: I think that's all I have. Just a minute.

1951 (By Mr. D. A. Frank:)

Q. I want to ask you one more question about the automatic. What would be your estimate as to when the automatic switchboard ought to be put in?

A. As soon as you can get it.

Q. On what ground?

A. \$16.00 operating charges only; it ought to worry you more that it does the city.

Q. I suppose it does.

A. I know it does.

Q. What does the automatic save?

A. Saves operatives.

Q. Does it cost more to install in the beginning?

A. Why I think so.

Q. Does it cost more to maintain it?

A. Not necessarily.

Q. Now, Mr. Kelsey, you have testified that it does, haven't you?

A. No.

Q. Haven't you ever testified that it costs more to maintain it?

A. Get the goods on me, I will be glad to know. I will be glad to have anything in my past life exposed. I haven't done anything—haven't even deserted a wife in Russia, as you pulled on a witness a short time ago.

Mr. Duls: What case is that?

A. Mr. Russell's. I might state incidentally it was discussed 1952 covered that it was the witness' second union, and the poor expert left a wife in Russia,—Mr. Duls was there. I still love my wife, and I want that in the record, too.

Q. But it is a fact, however, Mr. Kelsey, that an automatic switchboard requires more attention and more money to maintain it than a manual switchboard?

A. No, that isn't true, Mr. Frank. We could easily demonstrate that by the suit of the Citizens Telephone Company of Grand Rapids, with something like 20,000 telephones. The Bell Company put it into Norfolk, Virginia, and we will soon have some of their records on the cost.

Q. Mr. Kelsey, to refresh your memory about what you say about the automatic switchboard?

A. What was the date of that?

Q. I recall to you that in the Enid case in 1928—

A. We had no automatics then to amount to anything. The automatic was experimental and fighting against every odd.

Q. Well, well wasn't it actually installed in about 40 places there?

A. Good Heavens! You can't any more compare the automatics of today with the automatics of that Enid case than you could compare the battleship of the main line of today with one of the Spanish War. They went through an awful struggle,—now be fair.

Q. I am going to be perfectly fair with you, but do you say that you did not have a good opinion of them at that time?

A. A rotten opinion of them at that time.

Q. Didn't you at that time say that you wouldn't, if you
1953 installed a switchboard of 2,000 put in anything else?

A. Not intentionally. If I said that I ought to have been discharged,—canned.

Q. (Reading:) "Q. Were they to perfect this automatic switchboard, you would save above the operating expense to install it, would you not? A. I will have to differ. I analyzed every Automatic Telephone in existence and I have not saved a five-cent piece. Q. Then the Automatic System up to the present time had not reached perfection—that telephone companies can afford to install it at this time. A. Automatic systems will affect the girls. Your girls are about one-fifth the total expense and run from \$2.00 to \$5.00 per station. You may save on your girls, but you lose on the first installation. Q. You are dealing with Automatic as it is now being tried? A. Yes, sir. Q. How many places? A. About forty. Q. What places? A. Grand Rapids; San Francisco; Los Angeles; Sioux City, Iowa; Portland, Maine; Decatur."

A. Los Angeles and San Francisco and Decatur have disappeared by the Bell.

Q. (Reading:) "Q. How long have these automatic systems been installed? A. About four years, probably five years. Q. As a matter of fact, they are not proving a success, are they? A. I reached the stage of engineering, that if I were going to install anything above 2,000 station, I would not put in anything else."

A. Well, what has that got to do with that per cent?

1954 Q. (Reading:) "Q. You are aware of the fact that these Exchanges that now have them installed are trying to get rid of them? A. No, sir, they are very well satisfied. Q. If there is such a report current, it is without foundation? A. In my experience, Sioux City is well satisfied and Portland is well pleased."

A. Sioux City is very ready to do it over, Mr. Frank.

Q. (Reading:) "Q. When they have this automatic system in operation, they have no operating girls? A. They have to have a few. You can not eliminate the one-fifth entirely. You have to have a few information girls. Q. So far as the practical operation of the Exchange you don't need any girls? A. Not in city work. Q. The elimination of that expense today you say is counter-balanced to some extent by the maintenance account? A. Tolls and additional service, plus interest on additional investment. You have two items. Q. What are the elements of additional cost in these various switchboards, I mean from the manufacturers standpoint?" And then the rest is not responsive.

A. All right, at that time your maintenances was just about what it is today. It costs from \$2.00 to \$5.00 to hire girls per station.

Q. Girls don't maintain the switchboard?

A. I am not talking about your maintenance being about the same, but the cost of the girls has mounted up to such a point that that has made all the difference in the world. It must be

1955 valuable because the Bell Company has set out to buy—

(By Mr. Howard, interrupting:)

Q. What proportion does the traffic bear to the maintenance in this plant?

A. The traffic expense of this plant is three times what the maintenance expenses are. They used to be even.

Q. I just want to ask you a few questions on that. The traffic is now three times the maintenance?

A. It is now; \$16.00 as opposed to \$5.38. It has gotten clearly out of proportion.

Q. The traffic is largely made by operating?

A. Oh, yes, that is the big bill.

Q. Roughly, what proportion would the operating bear to the traffic?

A. About 80%.

Q. What extent would the installation of the automatic reduce the operators?

A. Why in this town is absolutely and practically wiped them out.

Q. There would have to be some operators?

A. Well, information operators and things of that kind, to take care of information, but since it has been rebuilt and developed it does not require—

Q. (Interrupting.) It would reduce the operators 75%, conservatively speaking?

A. Yes, easy, but the maintenance of the Automatic System today is no greater than the maintenance of a common battery switchboard. Why, they have made battery systems,—the Automatic Systems, made today do not any more resemble the ones—

Q. (Interrupting.) The more they perfected the systems, why that would bear directly on the cost of maintenance?

A. Yes, absolutely true.

Q. Now, Mr. Kelsey, those are about the only methods we want to go into with you at this time. Now, I understand that you will procure these books that they promised to let you have this information, that will relate to the handling of these long distance tolls, and to the apportioning of a certain part of the long distance tolls?

A. The pro rate, the actual reconstruction cost of the Houston Exchange back as far as 1900 anyway.

Q. Then you will check the figures on the basis of 1919 of the 1919 revenue, allowing for the increased rate that was put in in 1919?

A. Well, I can begin the study of it, just as soon as they turn over to me their 1920 report, that is their January report which is due on January 20th, and then that bears directly on the five and two rate. I haven't arrived at any conclusion yet about this rate being too high or too low. I may decide that this rate ought to be raised considerably, I don't know, yet.

1957 Q. But you will take into consideration revenues as they actually occur?

A. Oh, as they actually exist.

Q. As they actually exist and which may not be accurately set up in this little statement?

A. I don't think it is fair to take any 1919 statements in connection with Houston, when the Company has this January report, which is a typical month, and I can almost create the skeleton, or we can go back four months to where this began and create a five months period.

Q. Back to the period when it went out of Government control?

A. Yes.

Q. Then you can make a study of whatever the cost of establishing business was from their books, and from their records?

A. Oh, sure, I want the copy of their report to the city on reproduction new.

Q. Then you have adopted the value of 1914 plus additions?

A. Yes.

Q. And then plus stores and supplies and their working capital, if they are entitled to any, and any intangibles that they are entitled to?

A. Subject to depreciation, Judge.

* * * * *

Cross-examination.

1958 (Questions by Mr. D. A. Frank:)

Q. Mr. Kelsey, the automatic switchboard is much more intricate than the manual switchboard?

A. Not now, it is really a beautiful thing.

Q. Is it simpler?

A. I think it is.

* * * * *

(By Mr. Frank:)

Q. Well, while we are on the 4½% that reminds me. After you finished testifying in the Cleveland case and they criticized the 4½%, did you hear the Chairman of the Board say that he had already investigated it, and it was correct?

A. And he said the matter of the contract didn't concern them.

Q. Is that what he said?

A. Yes, that is my interpretation of it. I am not disputing the 4½%. I didn't in that case.

Q. Where do you dispute it at all?

A. Why no, I am going to present a proposition on that 4½%. It is no dispute.

Q. You know that the Ohio Commission remarked at the time that it approved it?

A. Say, when the Ohio Commission has a young man that has been raised with the Bell Telephone Company, they are liable to approve it.

1959 J. C. KELSEY, a witness for defendant, was recalled and testified as follows:

Direct examination.

(Questions by Mr. W. J. Howard:)

When I was here some weeks ago and testified, I submitted what I called a tentative statement, with the statement that I would get further data from the Company and put in a final or corrected statement. Since that time I have received no further information from the company, or from the Company's books, except that I got while in Dallas. I made an inspection in Dallas the day after leaving here. I had access to the Company's Balance Sheet, Income and Expenses for the Company as a whole.

I did not get the inventory of 1914. With reference to the effort I made to get that, I asked for it, but I haven't seen it yet. I asked Mr. Frank for it, I think, or Mr. Gates, someone. We talked a great deal about that reproduction value in 1914. I tried to get it, but I haven't got it yet. The answer, or information that I got in regard to it was that I would get it, sometime. I guess, but I have not seen it yet. I have not received any satisfaction particularly with reference to it; they said that somebody had it, it, at least, wasn't there, when I was. It wasn't accessible at the time. They did not furnish it, and have not furnished it as yet.

1960 Mr. Howard: Now, Your Honor, we introduce here in evidence a paper. We introduce this copy and you gentlemen can use that. We just hand it to the stenographer and let him identify it, it will be Kelsey's Exhibit No. 2.

(The paper referred to was marked "Kelsey's Exhibit No. 2," and is transmitted herewith in the exhibit file.)

Q. At the bottom of Page I, Mr. Kelsey, of this exhibit, you check up here what purports to be the value of this property and you say on the top line of that subject "Reproduction Value, 1914 (company figures)." As I understand it, it was the 1914 inventory showing these figures that you sought from the company and was unable to get?

A. Yes.

Q. Then how did you arrive at this figure of \$2,672,211.00?

A. From Mr. Lyndon's report here on the company's figures.

1961 Mr. D. A. Frank: If Your Honor please, at this time I want to renew the objection that I made at the start of this and incidentally will say that it is entirely new to me, that this witness has ever made any demands for any 1914 inventory. In fact, I don't know of any such inventory, but I do know positively that he made no demand on me for any such inventory.

Mr. J. D. Frank: He made none on me.

Mr. D. A. Frank: I want to renew my objection to any hearsay testimony based on Mr. Lyndon's figures and this testimony has been shown to be incorrect and he is proceeding with it, assuming

some figures. I imagine Your Honor will want to rule some way that we want to reserve our exception to the testimony based on it as we think it is entirely useless.

The Master: This Lyndon estimate, I don't recall just exactly what the testimony was.

Mr. Howard: It showed that he furnished them figures that were made from this statement, from their own figures on their inventory valuations made in 1914, upon an inventory of reproduction cost showing the property to be worth this much money and Mr. Kelsey's testimony is that he accepted those figures as company figures, having tried to get the inventory of 1914 and not having been successful.

The Master: I am going to over-rule your objection all right, but I want to know: Your contention is that the inventory was erroneous testimony.

1962 Mr. D. A. Frank: I don't know anything about inventory.

I haven't seen the inventory. I don't know exactly what he is talking about, and I don't think the witness does, but my objection to it is, for the very good reason, that on the witness' own statement, it is pure hearsay. He is merely taking a statement handed to him by Mr. Lyndon, that on the face of it, is wrong.

Mr. Howard: It is not necessarily hearsay, Your Honor, because Lyndon testified that these figures were furnished him by the Company, himself.

Mr. D. A. Frank: Lyndon has not testified to that.

The Master: I will give you your bill on it, Mr. Frank.

Mr. D. A. Frank: Yes, the assumption is meaningless.

As shown by this exhibit or statement, I accepted a reproduction value based upon Company figures as of the year 1914, amounting to \$2,276,211.00; the total value of the property at that time.

Mr. D. A. Frank: I object to the question because it is leading and because it clearly draws a conclusion of this witness on an erroneous assumption as to how valuations can be arrived at.

Mr. Howard: He stated how, Your Honor.

1963 Mr. D. A. Frank: Wait just a minute. I don't perceive

that your Honor is going to be misled by the statement that this is a valuation, but at the same time I don't believe we ought to concede even when Mr. Howard asks the question, if valuations can be arrived at by taking some figures that were prepared six or seven years ago and adding certain additions to it, calling it a valuation, and I have merely stated that, more to get the matter before Your Honor than for anything else.

Mr. Howard: You are proving what the reproduction value was in 1914.

Mr. D. A. Frank: I say we have not.

(Mr. Kelsey:) I say this was the value at that time as arrived at by that method. It seems that at one time in the history of the company there was an inventory taken. The public utility law is—

Mr. D. A. Frank: I object to this witness stating what the public utility law is. I think he ought to just answer the question.

The Master: I think you should just state the facts.

In that manner I arrived at the inventory, at the cost price, at the cost of reproducing the property at that time, in 1914. 1964 With reference as to what else from my investigation enters into the value of this property since that time, we merely take a record of the actual money put into the Plant. I got that from the same report, Mr. Lyndon's. I didn't have time to go into these things. It wasn't understood that I was. Mr. Lyndon heard all this.

Those things *things* are all subject to being refuted by the company's books; they are a matter of record. I have added to the reproduction value of 1914, the additions to the plant since that time. Those additions, as shown by my statement, which purports to be taken from the company's books, amounts to \$1,374,560.00, up to December 31st, 1919.

In adopting that method of taking the reproduction value of 1914, and adding to it the additions to capital and plant since that date, I arrived at \$12,046,771.00 as the present value of the property, local, as of date December 31st, 1919.

Under subdivision 4 of that heading, I have an item of "Toll Investments Chargeable to Houston," of \$808,621.00.

Q. How did you arrive at that amount of \$808,621.00?

Mr. D. A. Frank: Wait just a minute. Now I want to add 1965 to my former objection at this time, to the consideration of any toll property at all for anything else in connection with toll, other than a bare statement of expenses and income in the City of Houston, for the reason that Your Honor has no jurisdiction to pass upon property outside of Houston. It is not involved in this case. The whole theory of taking a portion of the toll plant of this State and allocating it to the City of Houston, is wrong. As stated heretofore, if you go ahead on this witness' theory, what you obtain when you get through is the valuation of the plant in Houston, plus a percentage of the toll plant of the entire State and then take the expenses and revenues for the City of Houston on the local exchange plant, plus a proportion of the revenues and expenses of the toll plant of the entire State, and I guess when you got through you would have a nondescript, you would not have the thing that Your Honor is trying. Now it is futile to proceed with that testimony and have this witness on the stand for two or three days on cross examination on the theory that Your Honor is not going to follow. I can't conceive of a sound thinking, thorough minded Court proceeding on the theory that Kelsey is attempting to put over in this case. What Your Honor is trying here is not the value of the toll plant in the State of Texas, but what Your Honor is trying here is whether or not the property in the City of Houston is being confiscated. Now, if Your Honor wants to go further or wants 1966 to listen to it, or think that time will be saved by listening to the testimony, of course, that is Your Honor's own affair,

but I prefer at this time to raise the objection so that Your Honor will see the position we take.

Mr. Howard: Of course, Your Honor, these objections are not made with the idea that any positions will be sustained, but are made for the purpose of arguing the case, instead of arguing it at the case, instead of arguing it at the end of the trial.

The Court: Just a minute. I will over-rule objections at this time.

Mr. D. A. Frank: Note our exceptions.

Mr. Howard (continuing): With the idea though Your Honor, of following this theory, he makes this assertion to the Court and brands it as something we are trying to put over, and something that is for the purpose of misleading the Court. I don't think the Court is going to be misled even though I tried to.

Mr. D. A. Frank: I didn't use the word "mislead" at all.

Mr. Howard: But this is a sound theory and we have no doubt that it is one that is the key of what might be called the mystery of going along in the red all the time, and not making money.

Mr. D. A. Frank: I think, Your Honor has ruled on the question.

Mr. Howard: I wanted the Court, if you can do it, to get the relation upon which we are proceeding. Now, he made the suggestion that you have no jurisdiction or power over property outside of the City; that might be admitted to be true, but this is an equity case, whereby they are seeking the applicable rating. Now, they have property here in this Exchange that they come here and try to make the Court believe is very limited in its earnings, that the revenue derived from it is small, that it amounts to something over \$400,000.00, by the way of local tolls from subscribers. Now, that is not a fact. The fact is that they are originating here this property and earning here \$441,000.00 tolls, that is nearly double the amount that they say should be looked upon as revenues.

Mr. D. A. Frank: Four times as much, Mr. Howard.

Mr. Howard: Four times as much as what?

Mr. D. A. Frank: Four times as much as we allocate.

1968 Mr. Howard: I was not talking about that. I am talking about it was just as much again more than you say your entire earnings in your local exchange were. You earned about \$800,000.00, in your local exchange and about \$400,000 is all the local exchange is given credit for. Now, as Mr. Frank well put it, this is a question of confiscation; that is what Your Honor is concerned with. Now, when is the line of confiscation going to be reached? They have a property here they say, is worth a great many thousands of dollars and if you won't let us earn more than that, you are confiscating our property. But we tell them, your property is engaged in other enterprises, you haven't got this property here that is limited to the use of this local exchange, but this property is bringing into your treasury another \$441,000.00. Now, you can take it either way you want, you can either add to this property here, the fair part of the total property and put it in as this valuation. In other words, it can be done that way. Or, the value of the property useful and used for the local exchange here could be reduced accordingly because they

can't say, 'we have got a property here that is serving a twofold purpose and while it is true our revenue out of this alone is only \$800,000.00, and you are therefore confusing it.' If they had by products or another source of revenue that is derived from this property, it has got to be a fair adjustment of the other. You can either add to the property and make it pay a return here or the value of the property should be reduced in proportion of the amount of the tolls. They can't have this property here bringing them in big revenues outside of the local Exchange and at the same time limit or say our earnings are limited to this Local Exchange, or hand this Company here the very insignificant part of the earnings and say you must be satisfied with that. Now, Your Honor, will understand that all these expenses are allocated to these exchanges so that the effect of this, the way this thing is operated, they have all these different exchanges over the State and they allocate these Exchanges the prorata part of the expense of operating all these toll lines. Now, that expense is taken care of by all these different exchanges and there is twenty-five per cent taken out of the earnings of the initiating calls and the result is that they have seventy five per cent of these tolls free from any burdens of operations whatever, but absolutely in the language of A. Baker, ("pure velvet") that goes to the Treasury of this Company.

Mr. D. A. Frank: Of course, there isn't a particle of evidence to that effect.

Mr. Howard: Now, that is true, there is property invested between these different points but the operating expense is all allocated to the Exchanges, Local Exchanges so we say to you that to make it fair, a fair an equitable return so these people are not losing their money we say, that is all right as to these local exchanges the apportionment of the profits, that you are charging them and make near a fair return.

* * * * *

1970 An Independent Company, in getting its supplies does not have to have some Purchasing Agent to purchase on a percentage basis for it; they are all in the open market; they buy direct from the Western Electric Company, the same as the Bell Companies do. They have had Western Electric Company Salesmen standing in line asking for their orders for years and years.

The Independent Telephone buyer has a big, powerful purchasing agent for it, but he gets his stuff from the Western Electric Company, at market prices, and he needs nobody.

Q. Well, is the same benefit to be derived from this four and a half per cent upon purchases by the Western Electric Company for these associated companies, these American Telephone and Telegraph Companies?

A. You mean they get a better price?

Q. Yes.

A. They claim they do. I don't know that they do. I know when the Western Electric whipped us in competition, their prices have been absurdly low. The first switchboard job they ever took

away from me was in Columbia, Missouri, and then we fought all along the line. Probably sixteen switchboards they took away from us. They went into the game with only a top cost. They had an idea there wouldn't be any selling cost connected with the 1971 Western Electric Company, but they found out it took three hundred salesmen to sell their goods as against our seventy-five or eighty and they finally quit, but they are still in the open market and they sell a man anything and they go out and buy it for him, if he can't get it. They are the most accommodating concern in the world. If I was a customer I would rather deal with the Western Electric Company than deal with my own Kellogg Company, because they do more for them than I do.

Mr. D. A. Frank: I thank you for your kind words for the Western Electric Company.

A. (Continuing:) Well, I owned stock in them and lost money in the investment, too.

Cross-examination.

(Questions by Mr. D. A. Frank:)

Q. You went off and did just what I said you were going to do when you were here before in finding a valuation or the proportionate part of the valuation of the toll property allocated to Houston, didn't you?

A. No.

Q. You did not?

1972 A. No, you tried to find out what I was going to do, you know and you didn't.

Q. I told you that there were four different ways you could allocate the toll property in the city?

A. Oh, no.

Q. To the local exchange?

A. North, south, east and west?

Q. Well, you can call it North, South, East and West, but one of them was the total revenue of Houston compared to the total revenue of the Company; another was the total at Houston compared to the total plant of the Company, and another was the total plant at Houston to the total exchange plant of the company, and another was the expenses at Houston compared with the total expenses of the Company and I pointed out to you that it would make a difference which basis you used and that necessarily some would be higher and I asked you the question, if you were going to take the lowest percentage that was shown by those figures, didn't I? Didn't I ask you that?

A. Well, I suppose you asked me that. You probably did. I don't remember.

I didn't have any idea at that time: I hadn't studied it,—which one I was going to use. I used nine and four tenths per cent, 1973 which shows in that third page there.

Q. Now, I have had an estimate made myself to see what

these figures would show and the total revenue at Houston compared with the total revenue of the Company is nine and four tenths per cent; the expenses at Houston compared with the total expense of the company is ten and eighty-five one hundredths per cent; the plant at Houston compared with the total plant of the company is fourteen and eight one hundredths per cent and the plant at Houston compared to the total exchange plant of the company is twenty and fifty nine one hundredths per cent, and I notice that you selected the lowest percentage.

A. Oh because the others had nothing to do with the case.

Q. Because the others had nothing to do with the case?

A. Yes, because here the amount of hours and the time used on these lines are the only basis.

Q. Are you acquainted with what your answer was, before you went away from here and got your figures up?

A. Well, I wanted to leave something for you to think about until I met you again.

Q. I have been thinking for quite a while.

A. So have I.

Q. And I just wondered ahead of time why you selected the lowest figure.

1974 A. I don't know, I didn't know you were as foxy as that.

You Bell attorneys have a wonderful memory to remember things that never happen sometimes.

Q. Do you say that that is not true—

A. I have gone into the proposition—

* * * * *

A. Everyone of those figures, I rejected as not being the proper basis. Houston people don't use those lines as much as other people, why should they pay for it?

Q. Why, didn't you tell us that before? I asked you then on what basis you allocated it.

A. Well, I didn't tell you Mr. Frank, because—

Q. (Interrupting.) The reason you didn't tell me was because you didn't have to tell me?

A. Probably that, and then if I had—

Q. If you had found out it was twenty and fifty-nine one hundredths per cent instead of nine and four tenths per cent, you would have used it just the same?

A. I told Judge Howard when I was here before, I said it all depends on what that figures.

My objection to taking the entire exchange plant in the
1975 State and allocating your toll on the basis on the proportionate part of your plant is because that is not the unit that you use. The unit you use is the time you use the lines. There is nothing to do with so many feet of underground, and so many yards of cable here; there is only one unit. You have got to deal in the hours that you use the lines. Supposing that, the time that you use the lines in Houston this year, happens to be 9 per cent and next year happens to be twenty per cent and then you get the twenty.

Your local rate absolutely ought to change. Some years my business loses money and some years it doesn't. You apparently want profit all the time. If it is twenty you get it. If the Local Exchange plant of Houston is twenty per cent of the local exchange plant of the company, it means that the city of Houston has one fifth of the plant of the State.

Q. Doesn't it? Now, if it has one fifth of the local exchange plants and you allocate only—less than one tenth of the toll property to the local exchange, then you have taken one tenth of the property and allocated it to other exchanges, haven't you?

A. No, you have got nothing to do with that. I haven't considered that proposition at all. It may have been that if Houston did not use any long distance business at all, they wouldn't have 1976 had anything to pay for.

You have got my theory there; it is the use of the lines. I could not tell that until I found out what percentage it was going to be; I can prove it by the Judge that we rise and fall on that proposition. I told him that that afternoon when we went over that proposition and I was most curious to find out that when I got to Dallas. I was amazed by your earning power on these tolls. I went into this thing, took my chances, if you get twenty, you are entitled to twenty. There is only one way to make a dozen eggs and that is by the number. You can't go and measure them by the box car or by the hen you have got in the copp.

The total figure of \$4,855,392.00 at the bottom of page 1 of my exhibit is just your investment that you are entitled to earn on in the vicinity of Houston; that is what you are entitled to earn on in Houston. I think that without that \$800,000.00 it is an excellent value of your property what it cost you.

Q. I didn't ask you about cost, I am asking you about the fair value of it.

A. Well, you and I will have to agree on what "fair" value means, then.

1977 Q. Well, just tell us what you think the value of a piece of property is.

A. Well, are you referring to public utilities and public—the houses and lots?

Q. Anything, I don't care what.

A. The value of a property for rate making purposes is the money you put in it, and you are entitled to a return on the money invested.

In the case of a public utility, my idea of the fair value of a piece of property is the investment that you put in it. If I were employed to come here by the City and value the piece of property in Houston, I think that the figures which I found here are remarkably near right. I have been going over property for sixteen years and I don't think we are doing you any injustice by those figures. As to where I got my reproduction value of 1914,—company figures, I think we brought that out pretty well last time. Mr. Lyndon, the City Expert, and the Company furnished him those figures and

I asked for them, and I couldn't get them. I think I did look at Mr. Lyndon's 1914 report.

With reference to what the figure \$2,672,211.00 covers, we identified that at one time; I don't remember now I think there 1978 was something left out, cost of the product of business, as you claimed it, was left out. You never have fixed a cost in this town, you know.

Q. So that the figures that you have here of \$2,672,211.00 that you start with, is not a complete valuation of the plant?

A. Yes, that suits me, that is where I start.

Q. Mr. Kelsey, do you know that the figures that you start with were merely the figures for the physical telephone plant for the city of Houston?

A. Plus some little charges there.

Q. Do you know that it wasn't plus any charges at all?

A. I think Mr. Lyndon came up here and sat in the chair and explained that, that it took into account everything you had except this fictitious cost of establishing the business, which this company never had.

Q. Did you know that Mr. Lyndon made a report in 1914, in which he uses this language: "And the proper appraisal value of the Houston properties of The Southwestern Telephone and Telegraph Company is \$3,372,657.00 of which \$552,111.00 is an intangible value set up under the title 'Cost of Establishing Business,' Now did you know that?

A. What I wanted was for you to give me the figures which you agreed to do.

1979 Q. Well, those are the figures I am giving to you now.

A. Well, all those figures, I don't care whether it is \$650,000.00 or \$1,650,000.00—

Mr. Howard: Mr. Frank, Mr. Kelsey doesn't claim to have gone over these figures and he has accepted them from the Lyndon report and from information that he has gotten from Mr. Lyndon. Now, Mr. Lyndon will be here, I expect him here Friday morning, and anything in that report and how he got at those figures, if he can't sustain them, why that voids that part of Mr. Kelsey's testimony because he has accepted an analysis of those figures.

Mr. D. A. Frank: But Mr. Kelsey has written down in plain letters on the first page of his Exhibit "Reproduction value, 1914 (company figures) \$2,672,211.00." Haven't you, Mr. Kelsey?

A. Those are all company figures, every one of them.

Q. Company figures?

A. Yes.

Q. Do you know that? There was miscellaneous property amounting to \$64,789.00?

A. I think that that is included in there.

Q. It is not included. Did you know there was working capital of \$73,555.00?

A. My impression is, that is in there.

1980 Q. It is not in there, I assure you. And that the cost of establishing business was \$552,111.00?

A. You don't call that cost, you call that good will too, don't you, or growing value?

Q. It is cost of establishing business.

A. Growing value corresponds with it. It is a fictitious value. You never had any cost of establishing business in Houston.

Q. I am not arguing with you, Mr. Kelsey. The total appraisal made August 1st, 1914, if you are going to use the Company's figures, would be \$3,372,657.00. So that your figures ought to be changed, oughtn't they, Mr. Kelsey?

A. No, my figures suit me wonderfully well.

The Master: Give me that total you just read.

Mr. D. A. Frank: \$3,372,657.00.

Mr. Howard: What is that?

Mr. D. A. Frank: That appears on page 3, of Mr. Lyndon's 1914 report.

Mr. Howard: But he accounts for that in other ways; he gives you a cut up there, doesn't he?

The Witness: We identified this set up in the last hearing. Mr. Lyndon came on the stand and identified it.

1981 Mr. Howard: All that, Your Honor, is a matter that is up to Mr. Lyndon. Now, Mr. Kelsey has largely accepted them from Mr. Lyndon's statements to him. Now, if Mr. Lyndon can't sustain them, Mr. Frank is right about it, but Mr. Kelsey, in the mean—

The Witness: I asked for those figures.

Q. Whom did you ask for them?

A. You.

Q. When did you ask me for them?

A. On the train. That's a habit you Bell lawyers have and its a bad one.

Q. Mr. Kelsey, I hate to dispute your word, but if you made any such statement as that, I never heard it.

A. Look here, I never had that habit of repeating private conversations, but you said if those things didn't come to write you, or wire you.

Q. You didn't ask me, you might have asked Mr. Gates.

A. I don't think I ought to repeat that, I hate to introduce a miserable, contemptible thing like that. When the time came, I didn't get it.

Q. You were told when you were on the stand before that miscellaneous property amounting to \$54,789.00 had been left off, weren't you?

A. Well, what is the use of quarreling over \$54,000.00? What else?

1982 Q. Working capital amounting to \$73,555.00.

A. I think that is in there, because Mr. Lyndon verified that.

Q. But Mr. Lyndon didn't have it.

A. He covered everything except the cost of establishing business or good will.

Q. There isn't a penny here for good will.

A. Cost of establishing business.

Q. There isn't a penny here for cost of establishing business.

A. There ought not to be.

Q. There ought not to be and we know that. We didn't put it in. If those items set out, your report ought to be changed.

A. No, I don't change the report. Mr. Lyndon came on the stand and fastened the record and I abide by it.

Q. Well, do you agree with anybody that the reproduction cost of a piece of property has anything to do with the value?

A. That is one of the factors leading to an approximation of its value.

Q. What is the reproduction cost of this property here?

A. Well, you have got it down here in your books, your idea of it, you have George Player's opinion and all these opinions as to what it is.

Q. Did you look at any of them?

A. Yes, but you took an inventory in 1914 and the public utility law says that after one inventory the amount of money put in the property shall be added and the expense of making another 1983 inventory shall never be incurred and charged to the public.

Q. What one says that?

A. No, all of them.

Q. Is there one in Houston says that?

A. No.

Q. What is the use of quoting what they say somewhere else?

A. You are always quoting them.

Q. Just name one place where that is the law.

A. Mr. Wilson spoke of that very thing in Columbus, when the proposition came up of taking a new inventory. He said, "Oh, that has been fixed."

Q. Name one of the places.

A. Cleveland, Ohio, was fixed in 1914, and what money added in there, goes in there under your wonderful system of bookkeeping.

Q. Does that have anything to do with a confiscation case in Texas?

A. Well, if this is a confiscation case, I wish my property was in such danger of confiscation as yours.

Q. Answer the question about confiscation.

A. Yes, the cases are confiscation cases.

Q. I didn't ask you that; I asked you whether the laws of Cleveland controlled in Houston, Texas.

A. But you have State's rights, you fellows all have State's 1984 right-down here.

Q. State whether or not it does.

A. I don't know whether it does, but the general practice in about forty States and when those States adopt the law—

Mr. Howard (interrupting): Don't you know that the reason the Court gives for adopting cost as value is because it is difficult to as-

certain reproduction value and that once you take cost value, obtain it, the rule doesn't obtain for adopting reproduction cost.

A. (Interrupting:) You fellows had a lot of hard work and hard luck in that inventory of 1914. That fixed the record.

Q. We are talking about Houston, Texas.

A. I am, too.

Q. Just tell me why the reproduction cost of 1914 has any place in the City of Houston—

A. (Interrupting:) You have got it here, you took the reasonable value and applied that to it.

Q. Have you used it here?

A. I accepted it. I checked over your figures.

Q. Now, Mr. Kelsey, I want to ask you something else, if you know. On the same page in Mr. Lyndon's report, in which he says that the Southwestern claims that its property was worth \$3,372,667.00, at the top of the page, he says that he finds that the present value of the Houston Home Telephone Company's property 1985 amounts to \$797,173.00, did you know that the valuation that Mr. Lyndon is talking about here is prior to the time that these properties were put together?

A. Yes, and it is in this other addition. I said in my other testimony that if this City ever admitted any other telephone system that they ought to pay for it, and they ought to pay for it, but it is in there.

Q. Are you sure it is in there?

A. You fight that out with Mr. Lyndon.

Q. You are taking the figures here?

A. Yes, and if it wasn't included in this figure, we would have some awful high costs in there—

* * * * *

The Witness: This extension money, \$1,374,000 resulted in a gain of four thousand telephones.

Q. Did you know, Mr. Kelsey, that in addition to the \$1,374,000 that there was something like \$750,000.00 that is charged on the books as an intangible item, which is the difference between what was paid for the Home Telephone branch and what was actually taken on the books?

A. If you expend \$1,374,000.00 during all these years and 1986 only gain four thousand telephones, somebody—it is unquestionably in there, something is in there, something abnormal is in that figure.

Q. When did we gain four thousand telephones?

A. During that period.

Q. Between what years?

A. About 1914, from twenty one thousand to twenty-six thousand five hundred, I think.

Q. From twenty-one thousand to twenty-six thousand five hundred?

A. Just think now, an additional telephone oughtn't to cost as much as a full fledged fundamental telephone.

Q. Even when you have consolidation?

A. Yes, but that is in there.

Q. Even when you have a consolidation, you say you ought to do it for less money?

A. Oh, the expense of the consolidation in this town wasn't enough to bother you along that line?

Q. Do you know that it costs us nearly \$300,000.00 to consolidate?

A. You paid some awful prices for independent companies. I ought to put that in the record, if I could. You paid something that you didn't have to pay for it, it was a wreck, it was a ruin, and somebody got paid for something that they had no business to get a cent out of. Why didn't you let it die?

1987 Q. I think I remember you saying that is the way you expected to get some money out of Philadelphia by our paying a foolish price for it?

A. Yes, you would pay a foolish price for it.

Q. Just by waiting a little longer, we could get it for less money?

A. You tried every method to kill them. Why not let it go. If you paid that much for this concededly miserable dying plant here, you are a bunch of suckers.

Q. We paid \$1,300,000.00.

A. It was too much. Then the public ought to be protected from such folly. There ought to be somebody responsible in a case like this, to deliberately throw away the \$1,300,000 on a concededly broken down plant.

Q. Just now you said if we purchased independent properties and saved the public from having such competition, the public ought to pay for it.

A. Ought to pay a reasonable consideration, not an extravagant amount. The public are heedless. They will all vote for a bond issue or vote for an additional thing without realizing what they are doing, they ought to be penalized, but you have no right to give them a penitentiary sentence, when you get right down to brass tacks, if you haven't got something to show for it, you have been gold bricked.

Q. But where we have actually paid \$1,300,000.00 and \$600,000.00 has been added to our plant and the other \$700,000.00 carried as an intangible, at least you haven't got the intangible in this figure, have you?

1988 Mr. Howard: It is admitted that that \$700,000 is not in this statement. Now, what more explicit and definite statement can you get than that?

Mr. Kelsey: I won't admit it. It seems to me there is something must be there.

Mr. Howard: He says you have got it in there.

The Witness: If the last forty five hundred telephones since 1914, have cost \$300.00 a station, somebody——

Mr. Howard: Well, it might be that they have got something in there that they shouldn't have.

The Witness: I am inclined to think it is in there myself. Let Lyndon settle that.

Q. Mr. Lyndon testified on page 1864 of the record, when Mr. Howard asked him the question, "Q. Now, Mr. Lyndon, that included part of what was known as the Old Home Telephone Company in use? A. No, that was prior to the purchase of the old Home Telephone Company." So that these figures——

A. (Interrupting.) The inventory values did not include 1989 that, naturally, but the money paid in since, of course, contemplated that proposition, every dollar you spent on it.

Q. Mr. Howard has just made the statement to you, which is correct, that the figures which you have here of \$4,046,771 don't include anything for the intangible and don't include anything for the cost of establishing business.

Mr. Howard: I didn't say that, I said that they don't include all of the Home Telephone properties, all that is carried into it, is the actual property that was in use, and that about \$700,000.00 which was a loss upon this value, is probably not in there.

The Witness: What could be more absurd than having a cost to establish business, since 1914? What has it cost to establish business?

Q. The 1914 figure which you have used contains nothing at all for the cost of establishing business. Do you believe in using anything at all for the cost of establishing business?

A. No, not in this case.

Q. Do you believe in using anything at all for desks and automobiles——

A. Oh, that is in your furniture and fixtures.

Q. Well, the figure that you use for the physical telephone 1990 plant was \$2,672,211.00?

A. No, he had all those figures.

Q. Now, the miscellaneous property, in addition to that was \$64,000.00 and the working capital was \$73,000.00. Do you believe in having working capital?

A. Absolutely, you have to have working capital.

Q. That was the working capital in 1914. Would the same amount of working capital be sufficient now?

A. Oh, yes, you have only four thousand five hundred more telephones than you had then. You are collecting in advance.

Q. Don't need any more working capital than we had then and it would go just as far now as it would then?

A. Well, so far as you are concerned, yes. You don't have to pay the Western Electric Company until they call for your money.

Q. Now, Mr. Kelsey, you have taken \$808,621.00 and added to the local property, making a total of \$4,855,392.00?

A. Yes.

Q. Now, your idea of that is that that is the company's investment in the City of Houston?

A. No, I think that is about what they are entitled to earn in and around Houston and ever if your company is not only a local concern

but a long distance concern and a banker, as well, they are in the investment business along with other things. They are a very versatile concern but it is a burden that the City hadn't ought to carry. The citizens of this town ought to carry a burden of \$4,000,000.00, and if they re-imburse you on that basis, they will do you no injustice.

Q. In what capacity are you speaking when you say it ought? Are you talking as an investor, a banker, a telephone expert, an officer of the City, or an officer of the telephone company, or in what capacity?

A. Mr. Frank, have mercy.

Q. Well, just answer the question.

A. Now, read that question.

Q. (The question was thereupon read to the witness.)

A. I would take chances on a composite of all of them. Add them up and—

Q. (Interrupting.) You will take chances on a composite of all of them?

A. Yes, I will figure them and give you a nice drawing of what you ought to get.

Q. Now, Mr. Kelsey, your idea is that the first cost of reproducing this property is immaterial?

A. You haven't had any cost of reproducing this concern.

Q. Answer my question.

A. You have never lost any money in this town

Q. Just answer my question.

1992 A. What was your question?

Q. My question is that your idea is that the cost of reproduction of property at the present time is immaterial?

A. Why, absolutely, never was material in the life of this company.

Q. Does it make any difference at all in the trial of a case like this, what it would cost to reproduce it?

A. No, sir. It is only one of the issues leading to it. It has no bearing at all. If you were talking about the Independent Home Telephone Company, you might have thought that those fellows made a hopeless struggle to establish business and loss. In other words, the successful company is always penalized for its success and the unsuccessful company—

Q. (Interrupting.) Reproducing the property at the present time?

A. Oh, I am not talking about that at all. That would not be any more, maybe, than it would in 1914, because in this particular case, an established business like this, running back to 1882, never had a factor of establishing business in it.

The reproduction cost theory is just another fine scheme on the part of the company to hook her up a little bit. It is not a conclusion at all, it is trying to find out something. You know not as many companies have been as well run as yours for twenty-five or thirty years, but what they always make money. When a man subscribes for a telephone in our company, he would take it out for a year and we collected \$50.00 after the first of Jan-

uary. We never have collections but once a year. Do you suppose a concern like that had any expense of establishing business?

Q. Now, Mr. Kelsey, I can't understand what connection there is between what collection for a telephone has to do with a reproduction theory.

A. Expenses that you lost and can't recover. You didn't lose anything. Now, you are trying to come back to the subscribers in Houston and ask them to recover something which was not lost.

Q. Mr. Kelsey, at one time you testified for the Memphis Telephone Company, some old friends of yours, didn't you?

A. Yes.

Q. Now, assume for the minute that it would be possible that you were called to enter conference by them and asked to find a reproduction figure for their property. Just tell us what you would do?

A. They would pretty near have something because they lost money from the time they organized. Get back to your deficit theory again. They lost money from the start.

1994 Q. Go ahead and tell us what you would do.

A. If I was to, I would go into the deficit theory from the start.

Q. I haven't asked you anything about the deficit theory, or the historical value.

A. I know, but that is the only way of getting about it. In this particular case, we don't need that.

Q. I am asking you about the reproduction theory.

A. Do you understand it yourself?

Q. I absolutely understand it myself.

A. I said it was a fine scheme at this time to get a good value on your property.

Q. But assuming that the Memphis Telephone Company asked you to find the reproduction value?

A. I would go over the historical value at once.

Q. To find the reproduction value on that property?

A. You betcha, because I would get better value on it than on the other.

Q. Just tell us exactly what you would do.

A. I would go and capitalize their deficits.

Q. When you had the first reproduction value of the property?

A. Oh, no, the man that put the money into the plant, is entitled to a return on his investment.

Q. Can't you understand that question, Mr. Kelsey?

A. No, you are too abstruse for me sometimes, Mr. Frank.
1995 You wander off into transcendental things. I can't follow you.

Q. I think I am rather practical. At least I am practical enough to keep on asking you to tell me you can or can't answer.

A. I will tell you that in the morning.

Q. Do you know what the reproduction theory is?

A. You bet, I have attended all the conferences with all these scientists.

Q. Just tell us how you go about finding the reproduction cost.

A. I will tell you in the morning.

Q. Don't you know now?

A. Oh, I have reproduced; I have valued lots of them. Eleven years these fellows tracked into my office to get them.

Q. How would you go about finding the reproduction cost of the Memphis Telephone property?

A. Why is that necessary?

Q. But, Mr. Kelsey, we think that is necessary.

A. It is not though, it is only one of the ways to get at what these poor fish that went into the Memphis Telephone Company and put their money into it, lost. Now, we want to protect your investment.

Q. Won't you let me assume that it is necessary?

A. I won't in that case. Get away from Memphis. They lost money from the day they were born.

1996 Q. Take the Houston case, or Dallas, or any other place.

A. Which one. The Bell or the Independent? You can't deal with one, the same as you do with the other. You fellows have always had a cinch.

Q. Do you know how to find the reproduction value of the property?

A. You bet your life.

Q. Well, tell us.

A. I will do that in the morning.

* * * * *

I would take a detailed inventory of the plant at Houston just as you have done here. The man who made the inventory would not apply the cost price; he has a man that brings him the physical apparatus and the cost unit men apply the prices. I apply my own unit brought in by my field men.

I say that I have made three hundred, probably so, yes, sir.

I was making these inventories for different Companies, all through Ohio and Indiana; principally for bankers and the getting my customers ready for the commission rule. You see, prior to 1910 everybody in Ohio and Indiana, and all through there, were
1997 getting ready for the commission. We got ourselves ready to meet the commission.

Q. Then when you got through with these three hundred cases that you made appraisals of,—did you merely apply your unit cost and tell your clients that was what their property was worth?

A. Well, applied the unit cost—yes, about but you know most of my clients, Mr. Frank—I tried to tell you yesterday, that when you dealt with an Independent Telephone Company and a Bell Company, you have an entirely different condition. You can't escape that proposition.

As a valuation expert it would make quite a bit of difference to me whether I was valuing a plant just exactly like this Houston plant—a Bell plant, or an Independent plant.

If I were valuing a plant just exactly like this Houston plant for an independent company it would make quite a difference to me as to the conditions, and I will tell you why: The Independent Plant

would be less valuable for this reason, because most of the Independent Plants were built by promoters and by construction companies, and as a result an independent plant has about a million dollars worth of property to about two million dollars worth of securities against it. Your Bell properties never were built by promoters. They were built honestly and come up from the 1998 bottom with everything there and as a result the inventory of a Bell property always shows more than the amount actually put in and the inventory of an independent plant always shows less than what they put in. But, if I were trying to find the value of the plant, irrespective of the money put in, if the plants were identical, it would make no difference whether it was built by an independent company or by the Bell Company, but that enters into the composition. We always try to find out what money went into the property.

Q. I am asking you merely for the—

A. Oh, yes, you want to come in here and value this property, your plan is to apply the unit based on the last five years' prices, you would apply the unit to this town, based on a fourteen, fifteen, sixteen and seventeen price on an average.

Q. Well, now, let's get right back to where we were. When you prepare a proper inventory and have fixed upon your unit cost and material prices, and apply them, what would you call the result?

A. Well, that was one of the results, Mr. Frank. You see, that is only one way you arrive at—here is my problem and always has been, protecting the investor that put his money into this property. As I say, most of my clients have been independent investors, who have invested money in property in Texas. Built by promoters, fifty cents on the dollar and with that result. We found this reproduction value never would come up and fill the bill. We were then forced to go into the deficit or historical, because my clients always lost money in the ten years of their existence.

Q. I am trying to find out, after you had applied your costs, and material prices to your inventory—

A. Well? But you would have practically your plant.

Q. (Continuing:) Well, would that be the value of the plant?

A. I don't know. We used that method to find out if that was the money that you put into it. You know you are trying to do something entirely different.

Q. We are not talking about money now. We are talking about reproduction cost of a piece of property. I'm trying to see if I can get you to tell me just what you have when you get through with those figures.

A. We would have a property about what money was put into it.

That would be the reproduction cost of the property, providing you didn't have years of loss in getting started; the loss wouldn't have anything to do with reproduction cost of the property—it would cost so much.

Q. Well, let's stick to reproduction cost. Now, wouldn't you take into consideration the fact that some property was slightly worn, or

2000 rotted, or rusty, something like that? Would you take depreciation into consideration?

A. Oh, if you really carry out the true theory of reproduction you would ignore that depreciation entirely.

Q. But the Supreme Court of the United States in Knoxville Water case, said that you couldn't ignore it, Mr. Kelsey.

A. Oh, they brought that in, yes, and I think it is a sensible view, but let's get back again, that removes all your happy consideration of the case and gets you back to what the plant is worth.

— But in order to find out what the first reproduction cost of the property would be, you would have to take into consideration the depreciation. I would find out what the depreciation is by inspection, as my boys made these studies of the different properties, they would determine about what loss had taken place. They can take a brace and bit and tell what the condition of the core of a telephone pole is. They can take a spade and dig the dirt away from the pole and see if the pole is all right. You know I fell off a loose cross arm once,—fell forty feet. A man can examine a telephone pole and tell what condition it is in. He can examine a switchboard and tell what condition it is in; the only thing about a switchboard that would wear out would be your spring and jack and plug, otherwise, your switchboard would never wear out.

2001 A. No, no, no, I would not say that a man would have to tear a plant all to pieces in order to inspect it. If he took a bit or a shovel and removed the dirt around the pole that would be a bare inspection.

Yes, I found out in the last fifteen or sixteen years most plants generally find themselves between ninety to one hundred per cent good.

Q. As a practical man, you could determine a good deal about the efficiency of a telephone pole, merely by making a little bore, you wouldn't have to saw all the way through the pole, in order to determine that?

A. Oh, no, I wouldn't do that, you have enough history of the reconstruction work about the telephones poles, you know. You have enough old poles laying in the yard which you have taken down, you don't have to—

Q. So that it is entirely feasible for an engineer by inspection to determine the present condition of the property.

A. That is the only way that he can do it.

Q. Every other way would be wrong?

A. Oh, no, every way is useful. You can't eliminate any bit of information about it.

Q. Could a man stand in St. Louis, for instance, and never see the plant in Houston and be given some life and age tables and the amount of gross additions each year and net additions and determine the present condition of the plant in Houston?

2002 A. That wouldn't have a thing to do with the present condition of the plant, the life and age tables, because you are maintaining

your plant all the time. A man sitting in St. Louis could know, maybe, one hundred years from now, that Houston was ninety per cent good, by the way you keep it up.

Some of the reasons for that are because your activity each year in maintaining and reconstructing your property.

The junk value of the property is about 100%. When I left here and went to Jacksonville, I wanted to buy about five hundred telephones that I had sold to the Jacksonville Company for something like \$5.98. I found they were selling them for \$10.00. There was a new turn on this depreciation. It was worth more as junk than it was new.

A pole is the smallest part of your investment. Switchboards don't become inadequate, you put additions to them; they do not become obsolescent, they haven't yet.

Supposing the time has come when you have to have an automatic switchboard and have to take out the switchboards here, it would not then be obsolescent; you would move it out to some smaller town and use it again. These parts never wear out; they can't wear out. You cannot move a switchboard intact; you take it down and box up the cables. I have done it. You know your old Bell switchboard at Waco was nicely boxed and sent to Cleveland and it looked just as good as new. I couldn't tell it from the old; there is some labor lost, but it looks just as good as new; those soldered connections are a very small thing. On a switchboard, something like the size of the one in Houston, I wouldn't be surprised if there wasn't more than a million solders on it. I have soldered them by the millions.

When you got through and got back to the inventory and had applied your unit cost and material prices, you would have your reproduction new.

Q. Now, if you had taken into consideration anything for depreciation, that is, for instance, if you state the plant was in ninety three per cent condition—

A. That is the usual condition of the Bell Plants.

You would have to take off about 7% off of it; I think you have taken it off,—you have a better plant than usual. I think the plant here is unusually good and I think Mr. Hoag's report shows it 94% good.

2004 Q. Ninety-two and something, not quite ninety-three.

A. That isn't possible. You have got to keep the plant good in order to keep talking over it.

Q. Have you got the figures for the reproduction new, less depreciation? That would merely be the physical plant, wouldn't it?

A. Yes, that is about all you have.

Q. Now, if you were trying to find all the elements of value in the plant, there would be something else besides that, wouldn't there?

A. That is the only thing costs you money.

Q. The only thing costing money?

— Oh, my, yes, you would need some working capital, you have to have a little money, of course. That isn't denied. I think that is in here. Thirty per cent of all business fails for lack of capital, oh, it is quite reasonable that you would have to have some money.

Q. Then you would have to make an addition to the figure that you found in order to have some working capital?

A. Oh, I think that is in there. I think that can be proven later on by Mr. Lyndon. At least, I asked Mr. Lyndon if that was in there and he said it was.

Q. Do you recognize an element of value in a plant that is 2005 in operation, that has an organization and is paying some dividends, known as "going value"?

A. Well, you have no right to penalize the people of this town because you are successful enough to pay a dividend.

Q. Mr. Kelsey, I am not talking about penalizing the people.

A. That is what you are doing.

I do not recognize that there is such a thing as "going value"; I don't recognize that at all, that is a substitute to fill up balance sheets quite a lot, and good will and going value.

Q. Mr. Kelsey, if you as a purchaser, would start to buy this plant, or any plant, and had agreed to pay a round sum for this plant, and had gone through the operation of finding what the reproduction cost was, less depreciation, would amount to——

A. (Interrupting.) That wouldn't be enough history for me; if I bought it, I would want to look into the history of the plant from year to year.

Q. And in addition, you had accounted for a sufficient amount to cover the working capital and the deeds were ready to pass, you had agreed upon the price, was satisfied with the price, and just as you were ready to hand over your check, the man who is to sell this property to you had told you, Mr. Kelsey, you have figured only 2006 on the physical property, and I need all my employees somewhere else and need all of my books somewhere else, and I have moved every employee out of this own to another town where I need them and I have notified every subscriber in town that his contract is cancelled and I have accumulated the instruments and put them in a warehouse and you have all the physical property which you have appraised, would you take the property?

A. That is a very far fetched proposition. No, I would have at least thirty days and I could replace the whole bunch.

Q. Why wouldn't you take it?

A. I would be very foolish to come into a property where you took all the instruments away.

Q. Well, we put the instruments in the warehouse for you.

A. I would want the instruments in. No man buys a dead plant, he buys a live one.

Q. In other words, you would think that having a credit manager, and having some prices and having a stock of goods, that the people are familiar with, and having a reputation for fair dealing, and having proper location, you would think that all those things would be worth something over and above the mere physical goods on the shelves would be worth?

A. Not necessarily. I have noticed that whenever a new owner takes over a property, he fires about seventy-five per cent anyhow. He does that, even the Bell Telephone Company.

2007 Q. But still he would have the going value of the concern?

A. Oh there is some sense to that, of course. As long as any business runs and operates and makes a living, it has a value to the owner, not to the public. Not to the public. You know you are dealing with the public. This is a public service corporation. You can't apply this dry-goods proposition to it.

Q. Now, Mr. Kelsey, take a town like Chicago, your own home town. If a man had a franchise to do business as a telephone company—

A. He would be ruined.

Q. (Continuing:) And went into Chicago and established a plant in one section of the town, whatever he desired to serve, equal to the Houston plant in every way, but had no subscribers, would the plant be worth as much as the Houston plant is worth?

A. Yes.

Q. Without a single subscriber?

A. Yes, because they would be begging for service.

Q. They would be begging for service?

A. Your only problem would be to get the telephones to them, Mr. Frank. The problem today everywhere in the United States is, to give them service.

Q. Don't you have to educate some telephone girls?

2008 A. On no, that was twenty or thirty years ago. That is why I wanted to go into the history of this plant.

Q. Don't the telephone girls have to be trained?

A. A bright, average American girl can operate an exchange on twenty-four hours' instruction.

Q. Can a girl get on a big telephone board like the Preston Exchange and operate it twenty-four hours after she had seen it?

A. Oh, yes, you bet. It isn't a wise thing to do it, but she could do it, in a pinch.

* * * * *

Q. We ought to get a slave driver for them?

A. That's just the thing. The Bell Company needs a slave driver from President, down, the laziest organization in America.

Q. How many calls ought a girl to handle in a day?

A. She ought to handle a thousand, average a thousand and you oughtn't to have to carry her out to a hospital either, when she does it.

Q. How many do they handle in Cleveland?

A. About two hundred and thirty-one.

Q. Would it surprise you to know, Mr. Kelsey, that in the City of Houston, they are handling an average of over a thousand?

A. They are not.

Q. Are you swearing now, or just guessing?

2009 A. I am swearing, because from the records I have seen there, you run about five hundred calls.

Q. How did you get your figures?

A. From the number of girls you have on your pay roll and your peg counts.

Q. But you know that while we might have five hundred girls employed, some would be sick, some on absence——

A. We all of us know how much a girl is sick and they are all working, in the scarcity of girls, you crowd as many working days in as you can. The girls are working girls. There has been no change in the construction of a girl operator since 1898.

* * * * *

If I were employed by the Memphis Telephone Company, or some other telephone company that I am friendly with, I would not allow anything for going value, in all probability, it would not be necessary unless you had losses in your youth.

Q. Suppose there had been no losses at all, Mr. Kelsey, and the President of the Company was trying to find the fair value of his property, merely so he could acquaint his stockholders with the value of his property, he asked you if there wasn't some element of value known as "going value," what would you say to him?

2010 A. The only element of value that I possibly could show to him would be some way of getting his subscribers dividends, that is, what they want.

Q. He is not talking about dividends, he is trying to find out what the property is worth?

* * * * *

I do not know if the Supreme Court of the United States is wrong when it says there is an element known as "going value." You know I have all the respect in the world for the Supreme Court, but when one crowd votes five for and four against, it kind of puzzles me a little bit.

Q. But these opinions are reached——

A. (Interrupting.) In that case——every case in America is a legal case, you know.

Q. But is a question, an engineering question, like a question as to whether or not a plant has "going value"? Is that a legal question?

A. Practically yes, according to how much money you lost trying to start this service and give people service.

Q. Just analyze that statement a little bit, assume that in two cities, A and B, they are about the same size, and one of them has been operating for twenty-five years and from the very beginning, after the preliminary two or three years, when no company makes money, that from the beginning, after it got established, it
2011 ran a dividend of say eight per cent, sometimes ten and sometimes six, it averaged for twenty-five years averaged eight per cent, that is the town "A," in town B, a town of the same size a plant of the same history practically, the same length of time, for twenty-five years, say, people didn't like the service, or the rates were not properly adjusted, and year after year after year, the com-

pany that operated in town B, lost money so that over a period of twenty-five years it made an average of only about three per cent. Now, is this your idea, that the plant in town B, would have a higher going value than the plant in town A?

A. Neither of them would have it. As a matter of fact, under the law, that B town would have the right to capitalize its deficits for the twenty-five years and put it on the same footing with the successful company; in other words, the law penalizes the successful company and praises the unsuccessful company?

Q. What law does that?

A. The utility law.

Q. Which utility law?

A. Oh, all over.

Q. In what State?

A. All States.

2012 Q. Name one State.

A. Every State in the United States, Ohio and all, I have worked on the deficit theory.

Q. Wisconsin?

A. No, Wisconsin——

Q. Does Missouri work on that?

A. Yes.

* * * * *

I don't know about Arkansas. We had the deficit theory in the Emporia case and the Columbus case; they needed this deficit theory. With reference to Kansas, I say that we worked on the deficit theory in the Emporia case. I was assisted by Jim Noble, one of the best engineers in the world, and he worked for you folks; or I assisted James, I don't know which.

Under the law, my idea is, that a plant that loses money for twenty-five years is worth more than one that has made money, because one can capitalize its deficits and get a higher rate, really, than a successful company can.

Q. Now, I want to call your attention, Mr. Kelsey, to the fact that you are swearing.

A. I understand that I am under oath, absolutely under
2013 oath, and I have every respect for this Court, I am telling exactly what is what.

Q. Now, just tell me one single State where you have ever seen in the law, such a law that authorizes you to capitalize your deficits.

A. My goodness, that has been done time and time again in Wisconsin. It is one of the factors——

Q. That isn't the question that I asked you.

A. I am not a lawyer, you know. I know nothing of the law, but I know of the law's practice, that when I went into this case in Indiana, in the telephone company case in ——, we capitalized all those deficits, and showed that for ten years we lost money every year, and we capitalized that deficit and added that to the capital account.

Q. I am not asking you about any of that.

A. I say, I am familiar with the practice of the law, and my construction of it, Mr. Frank.

Q. I am asking you about what State has such a law?

A. I don't know, I never had time to look into the law; I have been busy with other things.

Q. So far as you know, there is no law that authorizes a capitalization of deficits?

A. Well, there must be in Illinois, because time and again
2014 I appeared as attorney myself, and took my client's case on the basis that he lost money from year to year.

Q. Well, that was merely an argument to the Commission?

A. Oh, yes, but I know they adopted it.

Q. Did you look at the law and see if there was a law to that effect?

A. I never had time to look at the law; I think there is twelve thousand—new laws appeared on our books in the last few years.

Q. So that your statement is, that every State in the Union had that law, except the State of Texas?

A. Except Texas.

Q. (Continuing:) Was slightly in error.

A. No, I think that the spirit of my answer was absolutely right.

Q. Do you know of a single State that has that law? I would like for you to mention it.

A. I have always worked on that theory in the States, I mean Ohio, Illinois and Minnesota, these conditions were always accepted, because these independent companies would be absolutely ruined.

Q. (Interrupting.) You mean they have present- an argument?

Judge Powell: He didn't say it is a statutory law, he said that is a utility law.

2015 Mr. D. A. Frank: There is no such law in the United States.

Judge Powell: There are a good many laws that allow them to capitalize their deficits.

A. (Continuing:) And they have — by this method; this reproduction theory would never get them anywhere.

Q. Now, Mr. Kelsey, just tell us what the deficit theory is.

A. Well, a man starts business with \$100,000.00; at the end of the year, he loses doesn't he? Then he is entitled to eight per cent, so the losses and his dividends he adds to the one hundred thousand, and he begins his second year with probably \$115,000.00; then he operates during that year and the losses he has plus the income for that year, he adds it and so on.

Q. On down?

A. To the hearing.

* * * * *

Q. Well, now, if these two plants that I have assumed in towns A and B, they each one of them cost \$2,000,000.00 and one of them has made money for its stockholders for twenty-five years and the

2016 other one has lost money for its stockholders for twenty-five years, but the plants were practically the same, about the same number of subscribers, and so forth, would you pay just as much for the one that had lost money as you would for the one that had made money?

A. The subscribers would probably pay a higher rate for that poor one than they would for the good one.

I would not necessarily pay just as much for the one that had lost money as I would for the one that had made money, but after the readjustment, I probably would, because the rates would be higher, and the returns would be a little higher. I would not pay either one of them, I don't think that is a fair question. I would not pay either one of them.

Q. Suppose you represented an inventor that wanted to buy property?

A. You mean, in this sense, to sell his stock?

Q. No, I mean an investor that wanted to buy a telephone plant.

A. Well, there's lots of them, buying lots of them and selling lots of them. You try to buy a telephone property and you pay a magnificent price for it, Mr. Frank.

Q. Well, I am assuming that you represent a man that is able to buy one of these two plants, now, would you buy if you could get them at the same price, would you buy the one that had
2017 been making money, or the one that had been losing money?

A. Under the law, I would buy either one of them, because you would be entitled to a return on your investment in either case.

Q. You wouldn't make any difference?

A. No, if the thing was administered and adjusted according to the public utility law, they would both be just the same.

Q. Under your theory of early deficit, the one that lost the money would be worth more, would it?

A. Why, pretty near it, that is the way it worked out.

Q. Does that appeal to your mind as reasonable?

A. Absolutely reasonable. I am not saying it is right, but I tell you the company in this country today that has lagged and lost money, stands a better chance before the Court and the Commissions to get a higher rate than the company that has always maintained its property well.

Q. But I am trying to find out the company that stands before you, as an engineer, in fixing valuation, which one would get the highest price?

A. They would both come out just about the same.

Q. What is the use of your deficit theory, then?

2018 A. Well, your deficit theory through the years is the *the* only way of getting at this proposition.

Q. What is there in the deficit theory—

A. The stockholders have put the same amount of money in each plant, haven't they?

Q. But we are trying to find the value of the plant.

A. You are trying to find the value of the plant and by and by

when we get this new rate adjustment in force and the return is the same and the stock probably would be worth just the same.

Q. Although one had lost money for twenty-five years and the other had made money for twenty-five years?

A. Yes, after it is once corrected.

Q. And it is the same property and the same size?

A. The stock would be worth the same in each case.

Q. So there would be no advantage in finding the early deficit in one plant as compared with the other, would there?

A. I am merely saying that it is one of the peculiarities in this telephone business. You have never had this graft and bonus stock, your Bell properties have always been well run. In the other cases, however, they have, they have got the same investment in the same plant, but one has been rifled and robbed and the other has not. You are trying to get protection, but it don't need protection because it had a little better luck, probably had better management.

2019 Q. So as a valuation expert you would put the same value on both of them?

A. Yes, for rate making purposes.

Q. We are not talking about rate making purposes.

A. That is the only way you can consider it. There's only two ways in which to consider it, for taxes and for rate making purposes.

* * * * *

Q. Yesterday I understood you to say that we make a few P. B. X switchboards?

A. You bet.

I mean my little company. We probably made fifteen or twenty switchboards last year. We don't want to make them, we only make them for accommodation. As to how big they are on the average, oh, about two hundred, three hundred, four hundred; we only do that when people can't get them from the old companies, and it is an accommodation. We have been making switchboards seven years. This little company and I have been making switchboards and working on them ever since 1898. Our switchboard manufacturing is growing wonderfully.

2020 It has been since 1914 since I sold switchboards for the Kellogg Switchboard Company. I did not begin making them myself about the time I quit the Kellogg Switchboard Company; I retired a while. I had made a little money, I had quite a little bit of money, I had quite a little,—quite a little bit of money and I thought I would rest, but I couldn't stand it any longer.

* * *
As to how long it has been since I sold a switchboard with ten thousand lines on it, well, let's see,—along about twelve, I think we put two, five thousand lines in Philadelphia, but we figured on them right along, you know. I think my last sale was San Parlow.

Q. You said yesterday that in order to sell a switchboard of that kind, you would not need any overhead expense, you would not need any engineering, no specifications, all you would have to do would be to find out the number of lines and multiply it by forty?

A. That is all; I don't know anybody around here that had anything to do with a switchboard.

Q. Would it make any difference whether a switchboard was going to serve a town where the calling rate was five or ten—

A. (Interrupting.) You have a cross connected frame
2021 to take care of that. You specify all that.

Q. You would want some specifications would you?

A. Yes.

Q. Would it make any difference whether your switchboard was located, part of it, on one floor and part of it on another floor?

A. It wouldn't make any difference, we would get a floor plan in each case.

Q. Would it cost any more?

A. Why no, you have one board on one floor and another on another there is nothing mysterious about this switchboard business; it is almost as simple as buying and selling eggs and meat.

Q. I believe you stated that if a man started to build a building he would not have to get any plans?

A. A building that would come under architects' plans; that is something done locally.

* * * * *

These switchboards aren't very special things,—standardized; been standardized for twenty years; the construction of the switchboard is very much simpler as compared with the construction of a
2022 building. Why, I would a good deal rather undertake to

build a switchboard these days than I would a building, when you consider the labor union and fight on the jurisdictional scrap between the paper hangers and the brick layers and door hangers, your switchboard would be free from all that. You would not have to have specifications to build it; you give an order to the manufacturer and he makes them all.

Q. You would have to have specifications to build it?

A. No, you give an order to the manufacturer and he makes them all.

Q. Don't you furnish him with any plans at all?

A. He merely looks them over; his action in buying a switchboard is almost infinitesimal.

Q. When you let the contract for the ten thousand line switchboard, that you referred to just now, do you just agree to a certain price on it, without looking at it?

A. Why, yes. This Keystone, this proposition they sent us there what they wanted was for it to be built and put in and give us the money for it.

Q. Referring just a minute to this reproduction theory, did I understand you to say that you would not consider that in finding the value of a piece of property?

A. I said that's one of the considerations.

Q. That is one of the considerations?

2023 A. In view of the early history of the property. You can't make any one rule infallible in this case; in the case of the Bell Telephone Company reproduction new is a fine thing.

Q. Tell me whether or not you agreed with this statement; "The first method of valuation, namely, actual cost, less depreciation, is favored by engineers and public service commissioners. This method, however, has not the sanction of the Court. The decision of the United States Supreme Court, which is the final tribunal in America is that the value of a public utility for rate making purposes is the reproduction cost less accrued depreciation." Do you agree with that statement?

A. Well, I suppose that is a statement made——

Q. (Interrupting.) This is a statement made by Mr. Lyndon, in his 1914 report on page 56.

A. I don't think any Court would dare even to fix such an unstable rule as that.

Q. You don't think any court would?

A. I don't think they would after mature deliberation, ever fix any one factor in this valuation theory. Now, I tell you at this particular time, reproduction new is a fine thing for the company. Ten years ago it was not, because, you see, the prices have gotten higher.

Q. Is Mr. Lyndon right or wrong in the statement?

A. I never saw Mr. Lyndon until he came down here.

Q. Ever see him here?

A. Oh, yes.

2024 Q. Is Mr. Lyndon well known in the telephone world as a telephone expert?

A. I never heard of him in the telephone business as an engineer?

Q. Did you ever have—in all of your experience as an editor and telephone engineer, did you ever know of his doing anything in the telephone world?

A. Yes, his contribution to the storage battery is a very important part.

* * * * *

Q. As a telephone expert, Mr. Lyndon is a good battery man?

A. I think he is an excellent gentleman and an authority in these matters. He is an authority in electrical matters. He was in Mr. Edison's laboratory, working as a consulting engineer. I know Mr. Thomas Edison wouldn't have a dummy in there, assisting him in all his different problems. I think Mr. Lyndon is a very remarkable young man.

Q. But he isn't remarkable as a telephone expert?

A. Oh, he didn't have time. You were accusing me of being a banker and everything else. I don't know why you did that. You know I worked,—I was afraid of poverty.

Q. Mr. Kelsey, what was it I understood you to say about the conduits and duct foot? What was the price you said you ought to pay?

2025 A. Oh, I said that just along in 1900 the entire duct system frequently was built for eighteen or nineteen cents a foot, duct foot, including man holes, too, Mr. Frank.

Q. Was that for a single duct foot?

A. No, no, that was all, they had as high as thirty-six ducts I think in some places they had seventy-two ducts in one trench. You know these people build with some sense, too.

Q. Now, Mr. Kelsey, you picked out the best item?

A. I just took the top item there.

Q. On Page 51, of Mr. Hoag's appraisal?

A. Yes.

Q. Exhibit No. 18, where it said two ducts—

A. Trench with two ducts in it.

Q. Trench,—two ducts, trench feet 1,254, 1.42 cost in place?

A. Yes, that average would be 71 cents, wouldn't it?

Q. Yes.

A. Well, add them all up—

Q. (Interrupting.) Look at the six duct and you will find there 2.28, that would be about forty cents?

A. Be about forty cents,—well add them all up.

Q. Now take 10 duct, it would be 3.21, or thirty two cents a foot?

A. You are getting down to reason, yes.

Q. And if you had twenty ducts, it would be 4.75, or twenty-three cents a foot?

A. You are getting down to pretty good figures.

2026 Q. And if it was forty-two ducts, it would be \$7.80, or about nineteen cents a foot?

A. You are getting down to some sense there, Mr. Frank, but the thing to do is to add them all up and to divide them and get the total average. You start awful high.

Q. Let's see if we do, the two duct, we have only 1,254 trench feet in the entire system.

A. That is about all you would have.

Q. Of six duct, we have 25,482 feet?

A. Yes, considerably more than that.

Q. So that your criticism, it sounded like our prices were too high, when you analyze it, it shows that the prices are not too high?

A. I haven't had any time in this case to take into consideration all of your prices. Your prices are always high in Central Office equipment, when it comes to duct and cable, you always are fairly reasonable.

Q. Yesterday you said you thought it was too high?

A. We were only talking about the top line. I said that I found it \$1.42 cents, and I said it looked like 72 cents. It was your business to come and show the facts.

Q. Well, we have shown you, haven't we?

A. I don't want to sit here with the idea of even deceiving you.

2027 Mr. D. A. Frank: You are not deceiving me; I am not easily deceived.

When we start to build an eight thousand line switch board, in order to determine how long it should be we have got so many

lines per cabinet, so many cabinets; it is specified, all cabinets have a standard measurement, six feet long, I have forgotten now, but I could get you that very quickly. The number of lines and positions and the number of positions per section determines how many different panels you have; that would be true in all different panels. Some boards you have fewer lines to the positions; the fewer calls you have, the fewer lines you have to the positions you have; we have some boards we fill six lines to the position. You would practically have to know what the calling rate is before you could determine what the switch board should be, but we would not know exactly. Not all positions have the same number of lines, you know. There is nothing mysterious whatever about the number of lines in cabinets. We have cabinets made of oak and mahogany. That old Waco cabinet of yours fitted into C'eburne without anybody being able to find it.

"Q. Now, you said yesterday that the Preston Exchange switch board would cost \$450,000.00, and that the Capitol would cost \$150,000.00; now, Capitol has 4,500 stations."

"A. I took the number of lines and multiplied it by different figures."

"Q. Now, how did you get \$150,000.00 for Capitol?"

"A. How many lines is that?"

"Q. Forty-five hundred."

"A. I think I put that down at about thirty thousand lines."

"Q. Do you happen to know that while there are forty-five hundred lines at that switch board, it is merely a division of the Preston switch board?"

"A. Well, it has so many feet of cable, so many cabinets."

"Q. But it is just the same as having nine thousand on Preston and forty-five hundred on Capitol?"

"A. All right; add the multiple jacks additional in there, twenty-five cents per jack, and you have got it."

"Q. But it is really a thirteen thousand five hundred switch board?"

"A. Oh, no, sir; it is a forty-five hundred line board with a multiple distribution coming from another board, making it a ten thousand multiple. You couldn't make more than ten thousand in your board, because you would have to get a girl on a step-ladder to get any higher. We build eighteen thousand boards."

"Q. You have not seen the switch board, have you?"

"A. Oh, no; I have seen switch boards?"

"Q. Do you know what they cost?"

"A. You mean Western Electric cost, or what I would pay on such a job?"

"Q. I mean if one was exactly as expensive a panel as the other, would you change your mind on it?"

"A. It could not be."

"Q. But if it actually is?"

"A. No, I don't know as I would."

"Q. You wouldn't change, even though it actually cost more?"

"A. It wouldn't make much difference in the proposition, even

at the maximum; no, it wouldn't, I wouldn't change that at all."

"Q. Now, there is some other equipment there amounting to \$23,000 that you did not consider."

"A. Oh, yes; oh, sure. To keep operators' desks and information desks and trouble desks and all the other desks."

"Q. Then, there was some construction in progress, amounting to \$45,000.00?"

"A. That is probably in there; that is in another item, you know."

"Q. Another thing that you did not consider was the "B" board?"

"A. Oh, yes, there is a "B" board in there. It is always "B" boards when you have more than one office."

"Q. But you did not count the "B" boards?"

"A. Oh, yes, I put them in there. You know the "B" board has a certain relation to the "A" board."

"Q. The prices that you are giving here,—\$30.00 and \$40.00 a line; how do you arrive at those prices?"

"A. Why, from our present standpoint of value."

2030 "Q. That was really the figure you used seven years ago, wasn't it?"

"A. No; Kellogg is still building mannikin switch boards; they built a switch board for you at Tulsa."

"Q. You have not sold a ten thousand switch board since 1912, have you?"

"A. Yes, but we bid on them; the company does,—my old associates."

"Q. Who bids on them?"

"A. The Kellogg."

"Q. But you haven't been with them——"

"A. (Interrupting.) I know, but I am still in there in a consulting capacity."

"Q. Do they have to come around to consult you as to how much they will charge for a switch board?"

"A. Oh, no; but the President and I discuss all of these problems."

"Q. The figures you read yesterday for Preston, \$400,000.00; Capitol, \$150,000.00; Taylor, \$87,500.00; Hadley, \$200,000.00, making a total of \$887,500.00; then other equipment would be \$23,000.00; construction work in progress, \$49,400.00, and if we think that our "B" board at Hadley and Taylor would be worth \$50,000.00 and at Capitol \$30,000.00, that ought to be added, because it is \$40.00 a line instead of \$30.00 a line; that would make your figures run up about \$1,039,000.00 without any overhead?"

"A. I am telling you, in hot competition that the Western
2031 Electric would have built that board at that figure, or less."

"Q. Well, for the purpose of the record, and in order to let you see what has been done in this, I want to read just a little excerpt from Mr. Lyndon's report of 1914, beginning on page 146 at the bottom, and see if you agree with what he says: "In valuing the Central office and sub-station equipment, we have taken the figures submitted by the Southwestern Telegraph and Telephone Company as the proper value of the equipment, including all overhead

charges. We feel sure that the figures are too high, but there are only two companies in America prepared to furnish Central office apparatus of the character and magnitude in use by the Southwestern Company, namely, The Western Electric Company and the Kellogg Switch Board and Supply Company, both of Chicago. The Western Electric Company is practically owned by the American Telephone and Telegraph Company, and therefore we did not apply to this Company for quotations on similar equipment, feeling in advance that we could not obtain figures for our purpose that would show any material reduction below the cost submitted by the Southwestern Company. Quotations were obtained from the Kellogg Switch Board and Supply Company, and this Company accorded us every courtesy in making up quotations for us. To make an estimate of this character of equipment delivered and installed, together with all the cable, wire and accessories, is a long and tedious process, and we could not expect any manufacturer to make such a close estimate for general estimate purposes as it would if there were a prospect of a contract for the material. The Kellogg Company's quotations, when loaded with overhead charges, came so near to the figures given by the Southwestern Telegraph and Telephone Company, that we have considered it better to accept the Southwestern Company's costs. We have obtained considerable information about the cost of other exchanges of approximately the same size and character, and from these we believe that the actual reproduction cost of the Central office and subscribers' equipment would be from \$65,000.00 to \$75,000.00 less than the figures which we had adopted. In the absence, however, of proofs based on definite quotations, we have no option but to accept the figures of the Southwestern Company, which we have accordingly done." Now, there is where——"

"A. (Interrupting.) Mr. Lyndon got the engineer's estimates, you know."

"Q. There's where Mr. Lyndon made an investigation and decided that our figures were lower than the Kellogg Company's."

"A. Oh, yes, he went to the Kellogg and asked them to do a lot of work on something; they turned them over to the engineers and they gave them what they call the list price. The list price and the selling price have no relation whatever."

"Q. So you think the Kellogg Company put one over on Mr. Lyndon?"

2033 "A. They didn't put one over him; they didn't pay any attention to him, because he was no possible customer."

"Q. Why didn't they inquire the number of jacks?"

"A. Absolutely a hopeless proposition. Why, why should they waste their time answering a question about Houston for? They are sensible and they have to work for a living. They wouldn't waste thirty minutes. They turned it over to some engineers who loved to keep themselves busy,—to keep their jobs going."

"Q. Why didn't they turn it over to the Sales Department?"

"A. The Sales Department might have answered it that way, but it got into the engineers' hands. The engineers never know what

the Sales Department sells at; they would not waste a minute on this thing."

Mr. Howard: You are talking about manufacturing; you manufacture this stuff?

Mr. D. A. Frank: We are interested in knowing the manufacturer's cost, not the sale cost.

The Witness: You can't find a buyer who is going to waste any time on it.

"Q. When you said yesterday that a telephone instrument could be made for fifty cents, what did you mean by that?"

"A. A telephone instrument?"

"Q. Yes,—you said a transmitter could be made for fifty cents."

"A. It can be."

2034 "Q. Is that the shop cost?"

"A. Manufacturer's cost."

"Q. Then you said immediately afterwards that in order to find the selling price of any manufactured article you multiplied the shop cost by five?"

"A. Yes, that would give you shop cost about twenty cents if you are selling it for a dollar, you know."

"Q. Did you ever know of a new transmitter being sold for fifty cents?"

"A. No, but they sell them for a dollar."

"Q. Did you say that the testimony in the Cleveland case was that they were selling them for \$5.50?"

"A. That is Mr. Wilson's testimony; they are selling them in the open market."

"Q. But that was before the dollar went up?"

"A. No, no; they are still selling them; anybody would be a fool for selling a transmitter for a dollar when you could get \$1.65 and \$2.00 for them."

"Q. You are selling them yourself?"

"A. Yes, sir."

"Q. Selling them by the hundreds of thousands?"

"A. No, no; I said that I had sold them. I sold something like one hundred and twenty-five thousand a year in my late Kellogg days."

2035 "Q. How long ago was that?"

"A. Up to 1914. No man keeps on as Sales Manager forever."

"Q. You are selling telephone instruments now?"

"A. Oh, yes, but we have got a small shop; we sell about five thousand telephones a year."

"Q. Are you making any of them new?"

"A. Some parts."

"Q. But the entire instrument?"

"A. Oh, no; we find that we can make more money by buying telephones that you folks throw away."

"Q. What do you pay for them?"

"A. Fifty cents."

"Q. Fifty cents for instruments?"

"A. Yes, sir."

"Q. And what do you sell them for?"

"A. A dollar."

"Q. Those are second hand, aren't they?"

"A. No, they are not second hand."

"Q. You said the ones that are thrown away."

"A. Not thrown away,—not needed any more."

"Q. The ones that are not needed by us and antiquated, you take and sell them for a dollar?"

"A. Nothing antiquated about a receiver and transmitter."

"Q. What would a receiver and induction coil that has been worked over by you sell for?"

2036 "A. Two dollars and fifty cents."

"Q. That is just the induction coil, transmitter and receiver?"

"A. The rebuilt cost,—yes: the sale cost of 1914."

"Q. That is for all three of them?"

"A. Yes, sir."

"Q. Now, the new price, according to Mr. Wilson's statement, was, on the market, \$5.50?"

"A. The theory of a rebuilt pricing is usually seventy per cent of the new."

"Q. How much?"

"A. Seventy per cent of the new, possibly."

"Q. Seventy per cent of the new?"

"A. Yes, sir."

"Q. Do you sell any new instruments at all?"

"A. Oh, yes, we have lots of new instruments."

"Q. What do you get for your new instruments?"

"A. You can't tell a new instrument from a rebuilt instrument."

"Q. What do you get for your rebuilt instruments?"

"A. We get them in lots from the Western Electric Company."

"Q. You buy them new?"

"A. Yes, sir."

"Q. And then sell them at seventy per cent of what the Western Electric Company sells them for?"

"A. That is about what our price is."

"Q. What do you get for a set new?"

2037 "A. We get \$10.00, flat."

"Q. Well, let's eliminate the part that we are not talking about; let's take the transmitter, receiver and induction coils; what do you get for that brand new?"

"A. We don't sell them brand new. We sell all transmitters for a dollar, all receivers for one dollar, all coils for sixty cents."

"Q. But do you actually buy new receivers, transmitters and induction coils, like you have them here in Houston?"

"A. Oh, yes."

"Q. From whom do you buy them?"

"A. Oh, we repair——"

"Q. (Interrupting.) I am asking you about brand new ones."

"A. They are practically brand new ones."

"Q. I am asking you whether or not you buy brand new ones."

"A. No. What do we want to buy brand new ones for?"

I think Kellogg got their price up to \$1.95 for transmitters, \$1.95 for the receiver and sixty cents for the induction coils, which would be \$4.60 per set.

"Q. Would it be interesting to know that that is the exact figure that Mr. Rhodes used in this case?"

"A. Why, Mr. Rhodes uses a great many figures since 1914."

"Q. Four fifty is just exactly the figures that he used; that would not be sensible?"

2038 "A. No, that would be a very sensible figure for the present price."

"Q. Have you figured what the carrying charge on that instrument that costs \$4.50 is?"

"A. You haven't two instruments in this house that cost \$4.50. Twenty thousand of these instruments in this town were put here under that dear old price, you know."

"Q. Mr. Kelsey, I am not going to argue with you about that, but the facts are quite different from that."

"A. They are not."

"Q. But let's assume that you start with \$4.50 as a figure; now, as an engineer, tell me what the carrying charge would be on that instrument."

"A. I am not caring a rap about a carrying charge. I made this statement, that I put in fifty cents, because you were tickled to death to lease these instruments to anybody for fifty cents a year."

"Q. Does your mind work enough to——"

"A. (Interrupting.) My mind can't work in comparison with yours, I am sure."

"Q. Can't you believe a \$4.50 charge on an instrument and tell me what the carrying charge would be?"

"A. Yes, but you didn't pay that for it."

"Q. Regardless of whether we paid that for it or not?"

2039 "A. Here's your cost of the instrument; the Bell Telephone Company has its own report, you know. They carry all their instruments on their books at about \$2.42; that is about what they cost."

"Q. As an engineer, you can certainly calculate what the carrying charge would be on \$4.50."

"A. Well, I could if I would."

"Q. If you can, let's see if you will or not? What amount would you charge for maintenance of one of those instruments——"

"A. (Interrupting.) That maintenance is all taken care of down in New York by the Western Electric Company."

"Q. But we are assuming that New York has nothing to do with this. This is an independent company, now. This is a fellow that bought one of these instruments; he is down here at Port Arthur, now, and he has taken a notion that he can buy his own instruments, and he has bought them and at the present time he has paid \$4.50 for them, and—now, tell me what the carrying charge on it would be?"

"A. Well, did this fellow down in this place pay \$4.50?"

"Q. Yes, sir."

"A. But he did not."

"Q. But I assume that he did,—you start from that point."

"A. Well, what do you want?"

"Q. Well, I want to know what the carrying charge would be on that instrument."

2040 "A. Carrying charge? Do you mean how much maintenance?"

"Q. Yes, how much maintenance?"

"A. On the transmitter, receiver and coil?"

"Q. Yes, sir."

"A. He wouldn't have any, unless he was struck by lightning and had his coil damaged; probably five cents a year would be absolutely the maximum for the maintenance of the transmitter."

"Q. Five cents a year?"

"A. Yes, sir."

"Q. What would five cents cover?"

"A. Everything."

"Q. Cover everything for how long?"

"A. Five cents a year indefinitely."

"Q. Five cents a year indefinitely would cover all maintenance?"

"A. Yes, sir."

"Q. How much would you have for depreciation?"

"A. Oh, you probably would have—it ought to run forty years, those instruments, with a little readjustment, they do,—I can show you instruments in perfect health that have been running since 1898; just as good,—no reason why they shouldn't be just as good."

"Q. Just fix your own price on it."

"A. On the basis of \$4.50, I give him ten cents for depreciation."

2041 "Q. You would make that in two and a half per cent, would you? You would have 1½% for maintenance and 2½% for depreciation?"

"A. Oh, no; we are talking about what it actually costs."

* * * * *

"Q. (Interrupting.) Would you have any administration?"

"A. Oh, no; we would probably have one cent."

"Q. Well, that would be about one-fourth of 1%?"

"A. Your administration of the independent plant never runs over \$2.50 per station, complete."

"Q. What would you count for return on investment?"

"A. Well, most of these fellows never get any return on their investment until the Bell buys them out."

"Q. What would you count for return on the investment?"

"A. They ought to have something."

"Q. What would you count?"

"A. Anything,—six, if you want to; they would be tickled to death with it."

"Q. The evidence in this case would be around ten per cent."

"A. Who said that?"

"Q. That is what the bankers say."

"A. Do the National bankers get ten per cent on their loans? They better report to the Secretary-Treasurer in Washington. If they are getting ten per cent, they had better make an explanation to the Secretary of the Treasury."

2042 "Q. But they claim in the National banks, they get security and they get only 7%. Is that a fair rate of return in the telephone business?"

"A. You have a wonderful security; you have the guarantee of the Constitution."

"Q. Well, would you take the returns yourself?"

"A. Well, six per cent; they would be awful glad to get six."

"Q. You say six per cent would be fair?"

"A. Yes, sir."

"Q. Although the men who know claim ten?"

"A. Who?"

"Q. Houston bankers."

"A. Are bankers business men? All the banker does is take your money and loan it out to somebody else with a little security on it. It is the most cowardly business in the world."

"Q. He knows a little bit about what money is worth, don't he?"

"A. A banker knows less about business than anybody else; there is no reason why he should know anything about it; he grew up in a cage and he thinks every man is a liar and every man is a crook from the time he is an office boy."

"Q. Is that the way you think about it?"

"A. No, I grew up from an office boy; I am a borrower, you know."

"Q. Wouldn't you concede 8%?"

"A. He would love to get 8%."

"Q. It wouldn't be unusual; these banks here in Houston average about 12½% a year."

2043 "A. Our banks in Chicago earn about 5%."

"Q. Here they earn about 12%."

"A. I don't know how they get it."

"Q. You would have to pay something for taxes, wouldn't you?"

"A. Oh, the taxes run annually about \$2.00 per station for everything."

"Q. I am taking this instrument, now."

"A. About two cents on the dollar. The taxes would run one and one-fourth per cent, about."

"Q. How about omissions and contingencies?"

"A. Oh, that's a joke. What would you miss in talking about a transmitter?—a receiver and induction coil?"

"Q. If you were valuing an entire plant, would you count anything for omissions and contingencies?"

"A. Why, I think it is the silliest confession that an engineer ever made to charge somebody \$100.00 or \$150.00 a day, and then say, but we have made a lot of mistakes, so we will have to put in a

percentage to cover that. It is rotten confession. I am ashamed of it."

"Q. On this basis you have here, Mr. Lyndon used——"

"A. Say, you told me Mr. Lyndon was a storage battery man; I don't vouch for his findings in the telephone business at all."

"Q. He made a report in 1914 and another report in 1918, and in one of them he had 28% and the other one 21%.
Now,——"

2044 "A. (Interrupting.) I don't believe in percentages in the first place. I am telling you as a man that handles and rebuilds these things what it costs in actual money to handle them."

"Q. How many telephone receivers have been in Houston more than three years?"

"A. Oh, there ought to be practically all of them here; and what in the world is the reason that a transmitter, receiver and coil should be changed in Houston. If there wasn't something radically wrong with it, it ought to stay in Houston fifteen years."

"Q. Would it be interesting to know that the turnover in instruments——"

"A. (Interrupting.) Yes, when you change and move, you go and take out an old one and put in a new one. It is still just as good; it has the nickleing off of the front, which you could have done for three cents."

"Q. But those instruments are turned in to the American Telephone Company——"

"A. (Interrupting.) That is where your extravagance comes in; right here in Houston are plenty of shops that could renickle your transmitters at three cents a piece."

"Q. Well, don't they ever get out of adjustment?"

"A. Why would they get out of adjustment? You take a screw driver and repair anything about it."

"Q. These instruments are turned in to the American.
2045 Telephone Company every four years."

"A. If you turn them in every four years, you have got a mighty rotten instrument; I will tell you that."

"Q. Do you know how many different types of receivers are used?"

"A. Oh, yes, you finally had to come to our —; you bet, that is an improvement. You borrowed that from the Independent. You are using those receivers yet, you know."

"Q. In one breath you tell us to use them for forty years, and then——"

"A. (Interrupting.) The Bell Company is using them; you are using them in the country, but magneto telephones don't need the protection that common battery telephones do. You can use them forty years, and then when the Western Electric Company gets them, then all they do is to nickle the front and put in a screw and it is just as good as new."

"Q. Did you know we had forty-eight different types of receivers and sixty-eight different types of transmitters?"

"A. You don't; you've only had three different types in the last twenty years."

"Well, the sworn testimony in this case is that there is forty-eight different types of receivers and sixty-eight different types of transmitters."

"A. Not in the public hands. I have been using telephones for twenty years——"

"Q. (Interrupting.) Probably you didn't notice the difference."

2046 "A. Oh, yes; that is one thing I always do,—look at the inside of them. I venture to say that I know as much about a transmitter as any other man in America."

"Q. Out of the forty-eight different types of receivers and sixty-eight different types of transmitters that have been used, you have recognized only three?"

"A. Oh, no; they have been used and, of course, you have made them; you have them in wireless; you have them in other things; we make that many types ourselves."

"Q. Now, Mr. Kelsey, an instrument that could be made, which could be bought now for \$5.50, or taking Mr. Rhodes' figure of \$4.50, in order to be conservative, you think that that instrument, if a man could afford to rent that instrument out at fifty cents a year——"

"A. (Interrupting.) They tried to do it awful hard, Mr. Frank."

"Q. When?"

"A. Oh, for years and years. It was the most pitiless industrial warfare for years. When the Western Electric Company come into the field the Bell Company tried to jam this Bell receiver down the independents' throats and it would not go. Then, when they could not sell them they began to lease them."

"Q. How many years has that been?"

"A. Up to 1914. We were still fighting a little bit; then I retired, but the battle is still on."

2047 "Q. Has any instrument been rented in the last few years for fifty cents?"

"A. I do not know that those contracts are still in force."

"Q. You know of your own personal knowledge that anybody is getting fifty cents?"

"A. Yes, sir; right in Chicago today. The City of Chicago is getting it. They leased all of their instruments at fifty cents; cheated us out of a good sale."

"Q. From whom?"

"A. The Western Electric Company."

"Q. Who maintains their instruments?"

"A. They do."

"Q. Who maintains them?"

"A. Oh, I think the Bell Company likely maintains what is to be maintained about them. They are all there yet."

"Q. How are these instruments used?"

"A. Why, on the P. B. X service, policemen, firemen and aldermen."

"Q. Is there a service charged them besides that?"

"A. Oh, yes; they have that old measured service in Chicago; whenever they hit a line it is charged up."

"Q. They put the instruments in there at fifty cents a year, then charge extra for the use of them?"

"A. Oh, yes, sure."

"Q. That would be really an extra charge?"

2048 "A. What has that got to do with it? They do ninety per cent of the talking among themselves."

"Q. When was the last time you saw the contract?"

"A. About '17 or '18; I was over there at the City Hall."

"Q. You looked at the contract?"

"A. Yes, sir."

"Q. Who signed the contract?"

"A. I think Mr. Sonney."

"Q. Mr. Sonney, on behalf of whom?"

"A. The Chicago people had to do that; the Company had to make the deal, if I remember right; you can get that, you can show that."

"Q. Fifty cents per year or fifty cents per month?"

"A. Fifty cents per year for the instruments, on the basis I mentioned."

"Q. What else was in the contract?"

"A. That was all."

"Q. Just the instruments,—and that was a special contract entered into when?"

"A. About 1912. I lost the sale somewhere along in there."

"Q. For how long a term is that contract to run?"

"A. I don't know."

"Q. Could a contract like that be modified now?"

"A. I don't know."

2049 "Q. *What* would the Kellogg Switchboard Company make a contract like that now?"

"A. A lease at fifty cents? I don't know. They would have at that time."

"Q. Would you make a contract like that at that time?"

"A. We always believed that people ought to own their own telephones; it is cheaper."

"Q. Would you make a contract as a manufacturer to furnish the Southwestern Company the transmitters, receivers and induction coils, to keep them in good condition, at fifty cents a year?"

"A. Is that all they charge you?"

"Q. I am asking you would you do it?"

"A. I can't conceive of such a foolish question as that."

"Q. Isn't that the amount that you alleged in this case,—for fifty cents a year?"

"A. After you pay for broken shells, you pay for broken parts twice,—you pay the freight and you pay the express both ways."

"Q. As a manufacturer, would you undertake to furnish even your second-hand instruments at fifty cents per station?"

"A. Yes, sir."

"Q. Have you ever done it?"

"A. No, nobody is that foolish, besides yourself, to undertake to do business on that basis. It is a foolish condition, a subterfuge condition; every company ought to own their own instruments."

"Q. If they owned them they would have to have them
2050 maintained and repaired, and have to have replacements?"

"A. Yes, that would show in your sheets every day. I think that is something you ought to do yourself. I think it is absolute folly for you to ship them. I think you ought to do it yourself."

"Q. Do you know whether the Western Electric Company have a repair shop here?"

"A. They should have one. They ship much of that stuff right straight back from the main office."

"Q. Have you examined here to see whether they do it?"

"A. Not here, but I have visited a great many Western Electric Company offices, Mr. Frank."

"Q. I believe you stated that you told Mr. Howard, with respect to this division plant, the toll plant——"

"A. (Interrupting.) Yes."

"Q. (Continuing:) That you would have to stand or fall on the twenty per cent?"

"A. Yes, that is the only way to arrive at that."

"Q. In other words, that is the only hope of his making any showing in this case at all?"

"A. Why, that is ridiculous; I did not make any such assertion at all."

"Q. You put in just as little as possible in the plant?"

"A. A man pays twenty-five cents to go out here on the railroad, and I said the only basis of charging these tolls would be to
2051 charge for the use of them by the respective subscribers, but we couldn't find out——"

"Q. (Interrupting.) What was it you said when I asked you, with respect to the percentage you used, and you said you didn't know whether it would be ten per cent or twenty per cent?"

"A. At that time I did not know. At that time, really, I thought it was none of your business, anyway,—what I was going to do with this proposition anyway, in the first place."

"Q. But you stated that you told Judge Howard that you would have to stand or fall on whether or not it was twenty per cent?"

"A. I said that is the only basis,—is the use of the line."

"Q. What did you mean by saying that you would have to stand or fall on whether or not it was twenty per cent?"

"A. Well, I say if people in Houston use these toll lines in proportion, the City would have to stand it,—that all. That is perfectly obvious. If it was twenty, then they could charge you with twenty per cent of the total of the toll investment."

"Q. But when you were on Cross Examination before, on Page
2078, you testified,—I asked you the question: "How would you proportion the toll property in the States?"—and you testified as follows: "Well, I am going to have composites—I have got to
2052 study your pro rata of the expense you have got loaded in

Houston. You have got Houston loaded with practically \$120,000.00 of expenses here that I don't know what it is. Q. Are you going to divide it on the basis of expense? A. Not yet. I am going to wait and see. Not until I see the books. Q. Are you going to wait and see what result you are going to get before you decide? A. No, I haven't yet. I never fool myself that way. Q. Name some of the ways in which you might divide the toll property of the State? A. You show me the books. You don't know how, I don't know how I am going to take care of the proportion until I make a study of the situation. Q. Now, let's see, Mr. Kelsey, you could divide the toll property of the State on the basis of the proportionate part of the entire property as found by loading the Houston exchange property with all the property in the State, couldn't you? A. Oh, I presume so. Q. Now, you could divide it on the basis of the proportion of the entire expenses in the State as compared with the entire expenses in the City of Houston, couldn't you? A. Well, it could be, I suppose. Q. Now there are four different ways of dividing and allocating the toll property in this State to the City of Houston. Which one of those do you intend to follow? A. I don't know."

Then, after a colloquy between the attorneys, you say: "Show me the books. Q. Does your answer depend—does your system
2053 depend upon what the answer would be? A. I want to know on what basis you do all your allocating. Then I am going to—I don't propose at this time to say what I am going to do about that allocation. Q. Can you tell the Court at this time what would be a fair way of— A. (Interrupting.) No. Q. Now, Mr. Kelsey, have you ever done this anywhere else? A. I presume so,—I don't remember."

So that, Mr. Kelsey, it was just an accident, wasn't it, that you stumbled on the lowest percentage that it was possible to use for the allocation of the toll properties to the local exchange?"

"A. Did you ever make a speech and think of the many things you might have said, after you sat down?"

"Q. I am not testifying."

"A. You know, I thought of a lot of things after I got away, out of Houston, that I might have added to this case, but we were going at high speed and I told you that I would come to a final logical reason, and I finally did. If a man buys service from the railroad, he can use it so far, and no further."

"Q. Answer my question, whether it was an accident that you stumbled on the lowest percentage?"

"A. No, sir."

"Q. It wasn't an accident? I didn't think it would be."

"A. Well, I don't believe in accidents in this business my-
2054 self. I don't take anything for granted, Mr. Frank."

"Q. Did you figure out the percentage any other way?"

"A. No, that's the only way. I never even made another calculation. On the train, I said to Charlie Gates, or the man with him, I said: "I want to know what your toll business is"—and then I wasn't surprised to find that Houston wasn't getting its full share;

and I told Judge Howard at the time that the large city doesn't seem to originate the tolls,—that the small cities do. I found that out in Montreal,—that the small cities were originating all of the toll business, and I said when I got here: "I am very much surprised if Houston isn't doing what the other large cities do." Now Birmingham had a small amount compared with the rest of the community."

"Q. You say you didn't figure out the rest of the percentages,—the other percentages?"

"A. I don't think I did."

"Q. What is the meaning of the "deadly parallel" on the third page?"

"A. That is to show that the charge here is just in proportion to the portion——"

"Q. (Interrupting.) You stated that you didn't figure the other percentages."

"A. Well, not in this relation."

2055 "Q. And on the third page of your exhibit you show that 16½% of the company's telephones are operating here in Houston."

"A. That is for the information of the Court, and by a strange coincidence, 16½% of the traffic is here."

"Q. You found out that 16½% of the traffic is here in Houston?"

"A. Charged right here to the dollar."

"Q. And that 16½% of the telephones are in Houston?"

"A. Yes, sir."

"Q. Then you found out 19 per cent——"

"A. (Interrupting.) You have got this town loaded with maintenance and depreciation a little bit more than there ought to be."

"Q. Then you found out 23% of something; what is that, of the investment; the company's engineers have almost unanimously agreed you say that the Houston property shows an investment of practically \$8,000,000.00?"

"A. I saw one item here that come pretty close to eight million. That was my impression until I saw your figures yesterday,—six and a half million."

"Q. Then you say: "Surely a calculation which reveals 23% of the property of this Company in Houston proves its own absurdity, when it is noticed that but 16½% of its subscribers are in the City."

"A. Well, you consider that Dallas is a big property, and Fort Worth and San Antonio; you couldn't conceive of any proposition whereby Houston would have 23%."

2056 "Q. So that was figured out?"

"A. It has no relation whatever with the special condition. I was trying to solve that toll proposition, which was bothering me a great deal, and I found it quite logical and practical, too."

"Q. Now, the total plant in the City of Houston is about 20% of the total exchange plants of the Southwestern Company in Texas. Why wouldn't that be a fair basis of dividing the toll properties?"

"A. It is not, at all. It is impossible to conceive of conditions like that, when you consider Fort Worth, Dallas, San Antonio, Galveston,

Cleburne, and you can't, by any imagination, conceive of 20%. If you have, there's something rotten again,—something wrong. You couldn't have 20% of your investment in this town, unless you have got an old farm plant in Dallas and an old farm plant in Fort Worth. Why, it's ridiculous. There's other parts of this country."

"Q. How many stations are there besides the Southwestern?"

"A. One hundred and fifty-one thousand, I think."

"Q. One hundred and fifty-one thousand?"

"A. Yes, sir."

"Q. And how many stations in Houston?"

"A. Twenty-six thousand and five hundred. That is 16½%, I believe."

"Q. Now, about 16½% of the property, you are going to
2057 allocate 10% of the toll property, are you, or 9.4%?"

"A. Yes, because they only use that much."

"Q. Now, do all of those \$4,667,000.00 of toll receipts originate at the one hundred and fifty-thousand stations?"

"A. Yes, that belongs to the Company; that is the money that is left."

"Q. Do you say that it does originate at those stations?"

"A. That is the money that is left; that is the toll business that belongs to them."

"Q. Now, there happens to be on the very report that you got that figure of the number of stations from, that happens to show, if you had just looked at it, their connecting stations in Texas——"

"A. (Interrupting.) That has nothing to do with that; that is the money that the Southwestern earned and turned in,—their own financial statement."

"Q. That is the money that they earned and turned in, their own financial statement."

"A. It has nothing to do with it."

"Q. Those are connecting stations?"

"A. Yes, sir; that has nothing whatever to do with this case."

"Q. So that the \$4,667,000.00 originated at one hundred and fifty thousand stations?"

"A. Not necessarily. The net result of your toll business in one year in this wonderful company resulted in \$440,000.00, last
2058 year in this town."

"Q. Do you happen to know that in the City of Dallas there are thirty-seven thousand stations?"

"A. That has nothing to do with this case at all."

"Q. And they are not counted in this one hundred and fifty thousand?"

"A. That has nothing to do with it. Who owns Dallas?"

"Q. Let's see where we are going to get on our allocation. You are going to allocate ten per cent of the total toll property in Texas to Houston. Where are you going to allocate the other ninety per cent?"

"A. To the other various towns that originated it. That has nothing to do with the State of Texas, Dallas or Fort Worth; it has nothing to do with anything."

"Q. Then a little town like Bryan might have an allocation of 25%,—mightn't it?"

"A. It might have; that is a wonderful earning, too. You are proud to have that little station down in there. That is where your money comes from, Mr. Frank."

"Q. Did you know that the total figure that you used contained over \$100,000.00 that wasn't telephone rentals at all, but was for leased wires for telegraph service to the Associated Press?"

"A. That won't make much difference. It is very small. I have dealt with those telegraph tolls and all of that is in there.
2059 You know that is a part of this system. You know that is in there. You know Houston has a leased telephone business and they have these wires in here."

"Q. Suppose you were told that in the one hundred and fifty-one thousand stations in Texas, that only about two-thirds of the \$4,667,000.00 of toll business was originated?"

"A. I don't care whether it is originated or not. You collected that much money. What has that got to do with it?"

"Q. All right. Now, that is two-thirds of it. Now, in allocating it—"

"A. (Interrupting.) Allocating nothing. I am talking about all the tolls that you earn."

"Q. In allocating your long distance lines to the various local exchanges, if you would allocate it on the basis of use, as you have done, you would leave about 33 1/3% of your plant up in the air; where would it be allocated?"

"A. What 33 1/3%?"

"Q. There is only about two-thirds of this amount of the total revenues from toll business that is originated at the one hundred and fifty-one thousand stations."

"A. And paid for."

"Q. And paid for."

"A. How do you know that?"

"Q. Because we have the figures."

"A. Your balance sheet shows so much earning for the
2060 year."

"Q. Our balance sheet shows a little over two-thirds of the tolls originating—"

"A. (Interrupting.) Originating? What are you talking about? What has that got to do with it? You might originate any amount and send it to New York. The money you have kept out of your toll business amounts to \$4,667,000.00."

"Q. Let's assume—"

"A. (Interrupting.) Don't assume anything. Your toll earnings are just—don't matter whether you originate it or terminate it,—you have collected the money and kept it, and you have paid all commissions, too."

"Q. Now, these \$441,000.00 worth of tolls originating in the City of Houston is the thing; that is the percentage on which you have allocated the toll property?"

"A. (Interrupting.) That is the information I had. Do you

come into this town and admit that you had \$441,000.00, but that you were trying to gum-shoe them out of three-fourths of it? You folks always keep the books and hide them out and never will let anybody see them, and then you come in here with some of your wheres and wherefores. You earned \$441,000.00 on toll business in Houston, and that is the basis you are going to settle on,—the money you earned on your long distance business."

"Q. Oh, I am just trying to find out why you left out the rest of it. Suppose there was one hundred and fifty-one thousand 2061 stations——"

"A. (Interrupting.) Nothing to do with stations."

"Q. Well, I notice you abandon stations?"

"A. Well, you abandoned it too. Never was considered in this proposition. I had those conditions in Dallas in mind,—all those conditions."

"Q. Mr. Kelsey, if there were five other towns in the State of Texas and only five other towns where we were doing business, and each one of them had a plant the same size of Houston, or approximately 26,666 stations, that would total one hundred and sixty thousand stations. Now, I want to show you the fallacy of your reasoning, by showing you——"

"A. (Interrupting.) I am not talking about stations, Mr. Frank."

Mr. Howard: You might demonstrate the foolishness of your own, Mr. Frank.

Mr. D. A. Frank: I will come back to that in a minute.

"Q. Out of the total earnings of \$4,667,523.00 for tolls, the total originating tolls on stations belonging to The Southwestern Telegraph and Telephone Company was \$3,277,969.00, these figures being given to me by Mr. Scott, leaving \$1,389,554.00 of these tolls that were originated on connecting line companies."

"A. (Interrupting.) And on which you earned mileage and terminal fees, and everything else; you earned so much during the 2062 year."

"Q. Now, you have compared the \$441,000.00 originating in Houston——"

"A. (Interrupting.) Not necessarily originating in Houston; the amount that Houston is alleged to have earned during the year."

"Q. It isn't alleged to have earned that."

"A. Yes, sir, it is. It is the amount of toll business in the City of Houston."

"Q. It is the amount of toll business collected for in Houston."

"A. Well, it doesn't matter. We are talking about the toll business that you do in your territory. You did it, or 9.4% of it here."

"Q. Let's put it on the per station basis."

"A. It has nothing to do with the per station basis. Toll business has nothing to do with the stations. Toll business is toll business; lines running around this town——"

"Q. (Interrupting.) \$3,277,000.00 of tolls originating at one hundred and fifty thousand stations."

"A. That has got nothing to do with the case. Originating—what has that got to do with the case?"

"Q. That would be about \$2,000.00 a station, wouldn't it?"

"A. You claim to be a good mathematician,—you use your pencil."

"Q. That would be about \$20.00 a station, wouldn't it?"

"A. Presumably, if you say so."

2063 "Q. So that the amount which Houston ought to originate, according to that basis, ought to be something like \$520,000.00?"

"A. Yes, sir."

"Q. Now, if you allocated your total plant——"

"A. (Interrupting.) What has the total plant got to do with toll business?"

"Q. Now, if you allocate to each town upon the basis that originates at that town——"

"A. Oh, no, this is the money that you alleged that Houston earned in tolls, and you gave them a fourth of it."

"Q. Now, if you do the same thing with every town in the State——"

"A. (Interrupting.) It is a pity that you haven't a statewide case; we would have them all here simultaneously."

"Q. Now, answer the question,—where would you be if you did allocate them to each town?"

"A. I haven't allocated them and don't intend to. We allocate the earnings of Houston as paid to the company as a whole; that is 9.4%. I am putting these figures in here,—they are not yours."

"Q. Mr. Kelsey, if you allocate to every town in the State just like you have in Houston, the result would be that you would have 32/46ths of your plant allocated and you would have 4/46ths of your plant unallocated, wouldn't you?"

"A. Because you did so much of the toll business in the
2064 rest of the country and so much here."

"Q. Well, how have you allocated it to the rest of the towns?"

"A. Each town in proportion to its toll earnings."

"Q. Would that make 100% of the toll earnings?"

"A. Absolutely,—100%."

"Q. How would it?"

"A. Because that is all you take in. That is all that Houston is credited with,—that \$441,000.00."

"Q. But there was \$1,389,554.00 derived from the other stations."

"A. I know, but that was earned by the toll lines and valid receipts, and that has got nothing to do with this case; that is a part of the earnings, legitimate earnings of the toll lines."

"Q. Don't you see that on the basis of your allocation you would never give 100% to the plant?"

"A. Why, absolutely not. Here's all the money that you earned, \$4,667,000.00; that's your earnings for the year, a wonderful earning. Houston was only given, according to your statement, \$441,

000.00. I think that is low and I have agreed to it because most of the large towns added a small percentage."

"Q. But on the same basis of \$441,000.00, you have been told several times that the originating toll revenue for the State at the Southwestern stations amounts to \$3,377,969.00."

2065 "A. I don't care anything about that. Don't you handle anything that comes in? Don't you terminate any business on your toll lines?"

"Q. Just tell me how you get 100%."

"A. Absolutely because your 100% represents your toll earnings.—\$4,667,523.00. That is the report that you made, that your toll lines received a certain amount. Then you used your toll lines for — and everything else."

"Q. Will you take a piece of paper, please, sir?"

"A. I am too tired to do your figuring."

Mr. Howard: You can make the computations if you want them. He is not a clerk.

"Q. Take a piece of paper and show me how you get 100%."

"A. Well, name the towns, all the names of the towns."

"Q. Instead of giving all the names——"

"A. (Interrupting.) No, no, the thing for you to do in this case you've made a lot of bluffs to me in this case. I am going to call some of those. We'll show you all about that 100%. That is what you are dodging. We will make you eat that quick. That is just the point I am insisting on,—100%, and you are trying to cut this down 20%."

"Q. You just take the figures——"

"A. I won't take the figures until you give me a list of all the towns."

"Q. Well, it would be a map of the State of Texas."

2066 "A. Well, bring it in, bring in all the towns."

"Q. But you are under cross examination."

"A. I know it. How can I create 100% if Houston——"

"Q. (Interrupting.) Now, \$3,277,969.00 originated at one hundred and fifty-one thousand stations?"

"A. Yes, but how much is terminated?"

"Q. Didn't you say that it was 43%?"

"A. No, no, sir."

"Q. If there is six or eight towns, or twenty towns, or any other number of towns in the State——"

"A. There's more than that."

"Q. In the State?"

"A. Fifty towns."

"Q. And all of them were in here at one time."

"A. Yes, sir."

"Q. And the total amount that was originated in all these towns——"

"A. (Interrupting.) But why that—why allocate the other?"

"Q. \$4,667,969.00——"

"A. (Interrupting.) But other companies have local earnings."

"Q. Let me finish my question. Now, if all of the other tolls just like they are in Houston, amount to \$3,277,969.00, and you attempted to divide the plant into proportions as between the \$3,277,969.00 as compared with the total toll earnings for the State, part of which was taken in at these other two hundred and 2067 twenty-five thousand stations in the total amount of \$4,667,523.00, can you see that you would have about 33 $\frac{1}{3}$ % of your toll plant allocated?"

"A. Yes, and I can see that you are cheating Houston out of about \$277,000.00. You put into this town what belongs to it by the way of terminating—you are cheating Houston; you are assuming that Houston gets nothing for terminating a call."

"Q. Your idea is that they ought to put in more than actually received?"

"A. Yes; you state in this case and come in here and find that the City of Houston is very nearly ruined with but \$441,000.00 a year. I go on up to the General Office and find that the Company, as a whole, earns \$4,600,000.00; I find if Houston has got its full credit for everything it is entitled to, it originates about 9.4% of the toll business; but if it comes out and is true that the City of Houston is being denied its share of this million and a half of terminal earnings and other things, which belongs somewhere, belongs to the Company, why, then I am perfectly willing to rest on my theory. Why not?"

"Q. All right, Mr. Kelsey."

"A. That would give \$600,000.00 to this town, and we would be perfectly willing to take our increase through investment."

"Q. All, right; let's go a step further. Suppose that the Southwestern Telephone Company should sell every local exchange 2068 in every town in Texas except the City of Houston, it would still have the same toll line property, amounting to \$8,602,359.00, it would still have the toll earnings of \$4,667,000.00. Now, I ask you to state to the Court whether you would allocate them the entire \$4,667,523.00 to the City of Houston?"

"A. It is an absurd condition that is not practical."

"Q. Well, it is possible, isn't it?"

"A. No, in that condition, then Houston would be loaded up with all these General Office charges,—these operators over here, these operating expenses."

"Q. Your theory of putting a part of the toll plant into the local exchange—"

"A. (Interrupting.) I don't know what you are talking about. You don't know either."

"Q. Well, I don't know whether you do or not. I know what you are talking about. I just asked you to answer that question,—whether you would favor putting the entire toll plant in the City of Houston—the entire toll earnings in the City of Houston?"

"A. It is an absurd situation, without parallel and without hope of parallel. It is a condition that is not possible. As long as we have this present condition existing in this town whereby Houston

2069 is loaded up with all the charges that could possibly be put on it, and it originates and handles and only receives a credit for—I can't see a reason now, while Houston is held to its proportion. It is being cheated out of what is going out."

"Q. If that was the condition, if the——"

Mr. Howard: He didn't state that.

"A. If you put a proposition up to me, that you segregate absolutely the toll lines of the company and build little switchboards outside of the community and connect with the trunks, then you have got a sensible condition; but you can't come in here and take the biggest part of your traffic expense, toll operators in the City of Houston, and load them in here on the City of Houston and try to erect any edifice as you did awhile ago."

"Q. (Interrupting.) Will you stick to my question, Mr. Kelsey? If I understand you, then if this company was——"

"A. (Interrupting.) If it was all a long distance company?"

"Q. Except the City of Houston."

"A. No, that would be absolutely absurd. Take your A. T. & T., which has no terminals, then you have got a fair condition, but here you came-flouge all the expense of running the long distance in on the Houston people."

"Q. Take the A. T. & T.?"

2070 "A. That is a separate concern. You never would have had all this argument in Court if you had had a separate toll company."

"Q. About eight years ago the A. T. & T. had one local exchange."

"A. Down in North Carolina? Yes, they tried to get rid of it quick."

"Q. I don't think it was in North Carolina, but it was in Alabama."

"A. Yes, sir."

"Q. Now, they had one exchange; you wouldn't undertake to load the whole long distance plant of the A. T. & T. Company on that one little plant down in Alabama, would you?"

"A. Oh, that is a perfectly absurd question. It has nothing to do with this case whatever."

"Q. Just where would it cease to be absurd?"

"A. We are talking about this condition that exists here."

"Q. Where would it cease to be absurd?"

"A. We are talking about a State telephone system here, of which we are all a part."

"Q. There's two hundred and sixty-two telephone companies in the State of Texas?"

"A. Yes, I imagine that there's more than that."

"Q. That's doing business with the Southwestern Telegraph and Telephone Company."

"A. Yes, sir."

"Q. Now, there are some of them that are purely local exchanges——"

"A. (Interrupting.) That has nothing whatever to do with it.

2071 "Q. Let me finish my question. Now, there's some of them that are purely local exchanges, some are purely long distance, and some of them are both long distance and local exchanges. Now, there are some of those lines that you might be called on as as expert to value."

"A. Not me."

"Q. (Continuing:) And I want to know if you went to value the local exchange or one of these long distance systems in this State that happen to own only one local exchange telephone plant——"

"A. (Interrupting.) What is the name of the company?"

"Q. (Continuing:) I want to know whether or not you would allocate——"

"A. (Interrupting.) Name the company."

"Q. (Continuing:) I want to know whether or not you would allocate the entire plant of a long distance company to the local exchange?"

"A. You name that condition, and after I look it over I will tell you exactly what I will do."

"Q. You don't have to have the name of the local company, do you?"

"A. Oh, yes; there's a thousand local conditions in this country. You can't erect any of this hypothetical bunk that you are erecting here and get away with it. We are talking about an actual physical condition. You show me a physical condition such as you
2072 suggest and I will go over there and look at it and look it over, and I will come back and tell this Court."

"Q. Can't you answer the question?"

"A. What is the question?"

"Q. I say, you don't have to have the name of the local company. I want to know if you went to value the local exchange of one of these long distance systems in this State that happen to own only one local exchange of the plant, whether or not you would allocate the entire plant of the long distance part of it to the local exchange?"

"A. That is an absurdity."

"Q. It is not; in fact, there's quite a number of them in Texas."

"A. Name them."

"Q. It is not necessary to do that."

"A. Yes it is, because I have got to see it before I can answer it."

"Q. Can't you conceive of such a case as that?"

"A. No, sir."

"Q. Did you ever know of a concern that operated only in a city?"

"A. Yes, sir."

"Q. Does the Chicago Telephone Company operate only in a city?"

"A. No, not in Chicago; you know, it reaches down to Joliet and Elgin."

"Q. Does the Cleveland Telephone Company operate in Cleveland only?"

"A. That operates all along."

2073 "Q. Did the Commission allocate all of the long distance lines to Cleveland?"

"A. They have a contract."

"Q. Most of them have a contract?"

"A. Where you have a separate contract and a separate long distance company, that is different. You have here an intermediate concern; you have to use a separator, you know."

"Q. The City of Dallas telephone plant is owned by the Dallas Telephone Company, a merger of the Bell telephone plant and the local telephone plant; a large part of the stock is owned by the Bell people, but still there is something like twenty or thirty or forty per cent of it that is owned by the local people and they have no long distance lines at all. In valuing the City of Dallas would you add a part of the long distance earnings to the local exchange?"

"A. If it is a separate concern, you have an entirely different condition. Here is a condition in this town that is so intermingled that you can't allocate it. There's more toll operators than there are local operators."

"Q. Do you swear that?"

"A. Yes, sir."

"Q. That there's more toll operators than there's local operators?"

"A. That can be proved."

"Q. But you are swearing now. You testify under oath?"

"A. Yes; I am glad you mentioned that, because I overlooked it."

2074 "Q. You are testifying under oath that there are more toll operators and more expense than local?"

"A. You have got a tremendous traffic load in this town."

"Q. What difference does that make with reference to this theory of yours?"

"A. Not a bit."

"Q. In the City of Dallas you wouldn't undertake to do that?"

"A. That is a different condition entirely. Here is a condition right here that is so plain,—it is as plain as your hand."

"Q. The City of Dallas, as I understand it, is connected with four or five long distance lines going in there."

"A. I imagine that they have got the old Texas long distance telephone lines."

"Q. Well, they have got several going into the exchange there. Now, if you were valuing the City of Dallas telephone plant you would not undertake to allocate a part of the toll——"

"A. (Interrupting.) After I looked over it——"

"Q. (Interrupting.) But you wouldn't undertake to allocate any of the long distance lines, or any of those four or five companies that operate in there, would you?"

"A. Yes, and I am going to see that the local community gets its share. That has been the great game,—hiding these things."

"Q. Have you a conception of what we are trying to arrive at in this case, Mr. Kelsey?"

2075 "A. I am trying to arrive at what the City of Houston ought to pay you for those services."

"Q. Do you know that what His Honor is trying to arrive at is the value of this property in the City of Houston?"

"A. Yes, and I have given you that in my opinion."

"Q. Why do you go out of Houston and drag in——"

"A. (Interrupting.) Because the confiscation depends on your earnings."

"Q. In other words, your idea is that if the long distance lines were losing money on the outside, but the City of Houston would have to raise its rate in order to carry the long distance lines?"

"A. Just about the size of it."

"Q. On the other hand, your idea is that if the long distance lines were making money, that the rates in the City of Houston ought to be cut down?"

"A. Why, the City of Houston is paying for all the toll girls and everything else. The thing for you to do is to separate the long distance from the local; build your switchboard full outside of town and you won't have this argument and confusion; but you are getting away with something."

* * * * *

"Q. Mr. Kelsey, do you remember what per cent you claimed was used for overhead expenses on central office equipment by Mr. Hoag?"

"A. What do you mean by that, Mr. Frank?"

2076 "Q. When Mr. Howard was questioning you he asked you to state how much, in your opinion, it would take to install the switchboards at Preston and Hadley and Taylor, and you made certain figures for him; and then he asked you how much overhead there was on there. You remember what per cent you used?"

"A. No, I don't but I can tell you in a minute; about 50% I think it was, Mr. Frank."

"Q. Just tell us how you arrive at the 50%?"

"A. Well, add land, buildings, distributing system, central office equipment and station equipment——"

"Q. (Interrupting.) Well, he was merely talking about central office equipment."

"A. Yes, I will tell you. By adding these items it amounts to \$4,655,000.00, and by taking the loadings the total amounts to something like \$6,915,000.00; in other words, the loadings are 50%,—the indirects."

"Q. Just tell us what loadings."

"A. Contingencies and omissions——"

"Q. (Interrupting.) How much contingencies and omissions?"

"A. Three per cent; engineering, 4%; general expenses, 2%; taxes during construction, interest during construction,——"

"Q. (Interrupting.) How much?"

"A. Why, that runs \$550,000.00."

"Q. Interest during construction?"

"A. Yes, sir."

2077 "Q. That would be about 9%?"

"A. Yes, and the cost of establishing business,—practically a million dollars."

"Q. Is cost of establishing business an overhead?"

"A. You have got it in as an overhead."

"Q. Do you call that an overhead?"

"A. Yes, sir."

"Q. That's the way you arrive at 50%—by putting in the cost of establishing business?"

"A. Yes, by adding 50% to the direct charges."

"Q. So when you said the central office equipment was loaded up with 50% overheads, you meant by putting on there what we call overheads, and in addition to that putting on something for the cost of establishing business?"

"A. Yes, your switchboard in question amounted to \$750,000.00, and I said in your loading scheme you had made it about \$1,100,000.00 for the switchboard."

"Q. Now, as a matter of fact, the cost of establishing business is not a part of the physical plant at all?"

"A. It isn't a part of the plant at all in this case."

"Q. Well, in any case?"

"A. Where you have that expense in starting a business, it is a direct intangible, of course,—that is, the cost of establishing business—putting on the business, running the business, but there is no reason for it in this case, as there is no reason to ever expect
2078 that there will ever be any period in your life where you will lose money in that way."

"Q. Do you understand, Mr. Kelsey, that these entire figures are reproduction figures?"

"A. Yes, sir."

"Q. And you understand that the figures used for the cost of establishing business were not actually lost to the Company?"

"A. No, based on all these reproduction figures."

"Q. Do you understand how they were arrived at?"

"A. We used to arrive at it by adding 15%. Over in Houston,—over in Montreal—"

"Q. (Interrupting.) And some of them add 25%?"

"A. Yes, sir, and I wonder why you didn't add more."

"Q. Twenty per cent is rather the average?"

"A. Oh, all percentages used in any basis of analysis—"

"Q. (Interrupting.) Twenty per cent for cost of establishing business?"

"A. In 1912 they thought that 15% was all right. Since that time some of them have claimed 20%; some of them have claimed 35%; there is no limit to their claim."

"Q. The cost of establishing business was not put on there before depreciation, or subtracted, was it?"

"A. You have two values. What do you mean?"

"Q. What are the two values?"

- "A. You have one without depreciation,—\$6,915,309.00."
- 2079 "Q. Now, tell us what that is called in Mr. Hoag's appraisal."
- "A. This is reproduction cost new."
- "Q. And how much did he take off for depreciation?"
- "A. Well, apparently he takes off—he calls this plant 92.91 good; in other words, he removes 7.9%."
- "Q. And what does that amount to in dollars and cents?"
- "A. It isn't figured that way; he has two sets of figures here."
- "Q. Well, what do the figures show the depreciated condition of the property to be?"
- "A. Well, let's see,—the depreciation is \$402,968.00."
- "Q. Well, now, what is that figure,—read it over again."
- "A. According to my calculation, 7.9% of your total reproduction cost of physical property, \$5,683,610.00 is \$402,968.00."
- "Q. And what does that leave for the present condition of the property?"
- "A. \$5,280,642.00."
- "Q. Now, down to that point there hasn't been anything said about the cost of establishing business, has there?"
- "A. Oh, yes, you have two costs of establishing business and this applies to both of them. Two applications of it,—the same figure in each case."
- "Q. But is 92 and some per cent applied to the cost of establishing business?"
- "A. No, no, it is not."
- 2080 "Q. As a matter of fact, engineers don't generally think of the cost of establishing business as an overhead expense, do they?"
- "A. Oh, if he doesn't he will get left and ruin himself."
- "Q. Well, did you ever know of any engineer that claimed that as an overhead expense?"
- "A. I know, too, that every banker, or every large business man will start in and create a surplus to overcome that very thing,—losses during the early period."
- "Q. We are not talking about the same thing."
- "A. Oh, yes we are; it is an indirect expense that disappears; it's losses."
- "Q. Well, does going value ever disappear?"
- "A. It never appears. I can imagine indirect losses, such as lost tools, broken tools during construction, missing parts—"
- "Q. (Interrupting.) Does interest during construction disappear?"
- "A. It's in there."
- "Q. Does that disappear?"
- "A. No, that's part of the investment that a stockholder buying a share pays for that."
- "Q. What did you mean when you said that that is an expense that disappears?"
- "A. What expense disappears?"
- "Q. Overhead expenses."

"A. It can't disappear, because it doesn't appear. You have no cost of establishing business in Houston."

2081 "Q. I am asking you about overhead expenses in general. Is overhead expense a legitimate expense to charge up in——"

"A. (Interrupting.) Certainly, there is no protest on that.

"Q. Is the cost of establishing business usually called an overhead expense?"

"A. Why, it is nothing but overhead in those cases where you have the cost of establishing business; it is a loss."

"Q. Tell us what overhead expenses are."

"A. Losses that you can't account for. It's waste, tool makers, for instance, in a factory, the men you have to rebuild tools, broken tools, waste of gas, waste of fuel, and all other little items that go in and disappear."

"Q. Anything that you lose and that disappears is overhead expense?"

"A. Yes, you take the unproductive load in a factory, and when an unproductive factory goes out of business——"

"Q. (Interrupting.) Could a person go into your factory, for instance, and take an inventory of the factory and arrive at the true value of the factory?"

"A. I can't conceive of such a case. We are not selling our property."

* * * * *

"Q. The Supreme Court of the United States in the Loncoln gas case said that the complainant had not such a monopoly, nor were its profits virtually guaranteed in such a sense to restrict it to a
2082 return of 6% upon invested capital. Now, the Supreme Court thinks that we haven't got a guarantee. You think we have?"

"A. I think you have."

"Q. Well, is there any guarantee here?"

"A. Well, you are asking for something, and at least have got a recourse that I couldn't get in behalf of my business,—you have got a privilege that I haven't got."

"Q. What privilege have we got?"

"A. You are coming in here and claiming a higher rate,—you are claiming confiscation."

"Q. Don't you see that what you can do in your business is to raise your rate immediately, and you don't have to go into court, and instead of this being a privilege, it is a burden on us to go to court."

"A. There is no relation there at all,—you have a cinch. I admire your courage, whether you come in and ask for rates or not."

"Q. Well, what do we get after we get our rates?"

"A. Get a return on your money."

"Q. Somebody will pay the return?"

"A. The public generally does."

"Q. We have the privilege of charging them so much?"

"A. Yes, sir."

2083 "Q. Now, the Supreme Court also thinks that we have the right to have going value considered, but you think we haven't?"

"A. You certainly have got a right to it if they cost you money, but you never lose through that reason."

"Q. How do you know we haven't?"

"A. Oh; the Southwestern has been successful from the start, and the Houston plant has been a success. You may have lost a little money during early life——"

"Q. Interrupting.) Do you know what the history of the Southwestern Company is?"

"A. I know the history of a great many of the principal Bell telephone companies."

"Q. Do you know what the financial history of this Company has been?"

"A. It has been a very wonderful success."

"Q. Do you know what per cent it has made during the entire history of the plant?"

"A. According to your figures, you have probably lost money."

"Q. Do you know that the dividends paid for the entire history of the plant averages 5.36%?"

"A. Well, that may be true. How much real money have you put into the Southwestern plant? That ought to be in that case"

"Q. Is that a wonderful investment?"

"A. I think, considering the indirect charges that have been made, that the plant has always made money."

2084 "Q. Well, the sworn testimony in the case is that there has been about \$37,016,863.91 in real money put into the Company, and the sworn testimony is that on the stock outstanding there has been 5.36% paid over a period beginning in 1883 and ending in 1919, which is 36 years. Now, do you consider that a wonderful investment?"

"A. To the owners it has been a very wonderful property. Mr. Glidden, and every owner that ever had it, made money on it. I don't care what your dividends were."

"Q. 5% is wonderful?"

"A. That isn't all the earnings you had in this property. You have drawn money out of this property, other charges and fees and contracts."

"Q. All right, tell us what money we have drawn out?"

"A. I don't know; you could show that."

"Q. Well, when and how much?"

"A. I don't know."

"Q. You don't know? Why was it?"

"A. Because I know it?"

"Q. You realize that you are under oath, don't you, Mr. Kelsey?"

"A. You bet; I have realized that from the time I hit this town."

"Q. You swore this morning positively that we had more tool operators than exchange operators?"

"A. No, I gave it as my opinion that it cost you more to operate your toll lines than your local exchange."

2085 "Q. But you stated positively this morning that we had more toll operators than we had exchange operators."

"A. I know that when people get to speeding up they sometimes do say something that they have to back-pedal on, and we were going at a very furious pace this morning; but I am still satisfied that the toll expense in this town is almost as high as the other, and I would like to know what they are; I haven't seen them subdivided."

"Q. Mr. Kelsey, the total number of toll operators in the City of Houston is 92 and the exchange operators number 415, making a total of 507."

"A. What is your pay roll for each one? I am talking about all costs, direct and indirect."

"Q. Can you conceive of 92 getting more money than 415?"

"A. No, but I am talking about switching operators. The whole foundation is laid for your long distance business; the whole theory of your organization,—they all start messages out of this town."

"Q. Are you ready to take back what you said this morning about our paying more toll——"

"A. (Interrupting.) If you prove to me that I was wrong, I would, yes, sir."

"Q. Anything I can prove is wrong, you will take back?"

"A. Yes; you pulled the Birmingham record and took it back, and I want the same privilege."

2086 "Q. Mr. Kelsey, what are some of the things that enter into the makeup of a switchboard? Do switchboard jacks enter into it?"

"A. Yes, sir."

"Q. What are 92 switch board jacks worth now?"

"A. Twenty-five cents; they used to be fifteen."

"Q. Where they come 20 per strip?"

"A. Yes, or ten per strip. The largest one used to be 35."

"Q. And No. 12 jacks—twenty per strip—what are those worth?"

"A. I don't know, but they—I don't know what they charge for them now. We used to get thirty cents for them."

"Q. And No. 12 lamp jacks, ten per strip?"

"A. If you will let me get my price book I will price everything you have got in your shanty. One thing that a Sales Manager has to learn is not to try to carry any prices in his head."

"Q. You won't undertake to tell me what a No. 12 length lamp jack, ten per strip, costs?"

"A. Oh, yes."

"Q. How much?"

"A. I can look at the book and tell you. No. 92 jacks, twenty years old now, are good for thirty years more service. I think I read from that yesterday,—No. 92 jacks—here is 92 jacks, 25 jacks,—a jack has been a quarter ever since the world began."

"Q. Did you know that the Western Electric Company was charging about 27 or 28 cents?"

2087 "A. What's to stop them from charging fifty cents?"

"Q. Did you know that the Kellogg Switchboard Company was today selling them for twenty-eight cents?"

"A. They ought to, if they are not."

"Q. And the No. 12 lamp jack which you say is 30 cents, did you know that the Kellogg Switchboard Company was today selling it at 45 cents?"

"A. No, I think you are wrong there. I can find out and bring my price book down and keep you busy."

"Q. What's a No. 110 'A' key, Kellogg, worth?"

"A. I don't know. We have about 700 different keys, different springs on each one, ringing and listening keys; I will get my price book and tell you exactly."

"Q. Well, you were undertaking yesterday to criticise the prices."

"A. Yes, but with all this multitudinous detail of engineering details—how many lines have you got? Five thousand. I will tell you in a minute how much you pay for it."

"Q. You don't happen to recall what a No. 110 'A' key costs?"

"A. I don't remember. I had to ask you what it was."

"Q. What is a No. 109 plug worth?"

"A. About sixty cents."

"Q. Would you be surprised to know that the Kellogg Company has quoted us a price of a dollar today on those?"

"A. How did you get that quotation? I wouldn't be surprised at anything in the telephone business. Are you trying to get
2088 others too?"

"Q. What is a No. 447 six point cord worth?"

"A. About five hundred seven—I will furnish you all the cords you want for forty-five cents."

"Q. Will you furnish the same kind as the No. 447?"

"A. Yes, ten thousand; I will furnish you one hundred thousand cords, and I will furnish them at that price. I just had a quotation from Belden on those cords,—just bought ten thousand receiver cords last week. Ask me about that price."

"Q. What is No. 163—'E' relay line of cut off worth?"

"A. They have changed those, as well as anything else. I think it was \$2.25."

"Q. Would you be surprised to know that the Kellogg Company quotes us a price of \$5.45 on those today?"

"A. They might quote that to you."

"Q. And the Western Electric Company charges us \$2.35?"

"A. Well, under what circumstances did you get the quotation?"
You know I have been in that game many, many years, and it is according to who is ordering the stuff. What's the last time that they sold you anything?"

"Q. Do you know how much No. 84 cable, 63 wire, is worth per foot?"

"A. It used to be about seventeen cents."

"Q. Would you be surprised to know that the Kellogg Switchboard & Supply Company quotes that now at 41 cents?"

2089 "A. That's good, because we have got about 100,000 feet of the stuff and we will raise our price on it.

"Q. So you gave a figure of seventeen cents?"

"A. That's what we have been selling it at right along. You see we got all of the old cable out of Buffalo."

"Q. Do you know what No. 70 switch board cable, 41 pair, is worth?"

"A. No, I don't."

"Q. You don't happen to know what it is worth?"

"A. I don't know."

"Q. Do you remember what it used to be worth?"

"A. What?"

"Q. No. 70 switch board cable."

"A. About 21 cents."

"Q. Would you be surprised to know that the Kellogg Switch Board Manufacturing Company has quoted us 53 cents per foot?"

"A. It wouldn't surprise me any. Let's see those Kellogg quotations."

"Q. No. 24 switch board cable, 21 pair?"

"A. That used to be 11 cents."

"Q. Would you be surprised to know that the Kellogg Switch Board Company quotes this today at 29 cents a foot?"

"A. Well, you know that most of these companies are shipping to Europe; you know the average American can't buy any metal now."

"Q. So your estimates on these things have no comparison at all, and appear to be from one-third to one-half of the quoted prices today?"

"A. From 1914 on. Are you talking 1920 prices, or the average prices of the last five years?"

2090 "Q. I am talking about prices right now."

"A. I don't care anything about the prices right now; they don't concern this case at all. If you want to talk the prices for the last five years, bring me your 1915 price books, your 1914 price books, your 1915 and 1916 prices, and 1920 price books and put them in the Court here if you want them."

"Q. Now, all of the materials that I have just called off to you are used in switch boards, aren't they?"

"A. Yes."

"Q. And make up—these ten different kinds of material quoted to you practically make up the switch board, except the frame?"

"A. Yes, some of them."

"Q. Cables and jacks and plugs and keys and relays?"

"A. Yes."

"Q. And cords?"

"A. Yes, sir, very simple devices."

"Q. Those are things that make up cable?"

"A. Cables?"

"Q. Make up a switch board?"

"A. Yes, sir."

"Q. That's true?"

"A. Some of it."

"Q. Now, you have guessed from 33½% to 50%—

"A. (Interrupting.) I haven't guessed at all. I have told you what the prices used to be and what I sold them at. I told you I didn't have my price book along, and nobody ever remembered
2091 in detail those prices where they have got ten thousand to remember."

"Q. The prices given us were the prices seven years ago?"

"A. Yes, and from the Western Electric at 45 cents—what about receiver cords,—give me a quotation on receiver cords."

"Q. Do you know, Mr. Kelsey, that all of these prices that I quoted you here from Kellogg are considerably higher than the prices used by Mr. Hoag?"

"A. Well, I think Hoag was fair enough to go back and get the average of five years."

"Q. Mr. Hoag's average covered 1918 and 1919.

"A. Well, he ought to have taken the five year average."

"Q. Well, would the five years' average give you a true picture of what it would cost to reproduce the plant,—of what it would cost to reproduce the property?"

"A. It would give us one of the figures,—only one of the ways."

"Q. Mr. Kelsey, if you were called upon to find the value of a piece of machinery out here, would you have to know what money was put into it in order to determine the value of it?"

"A. What is it, public utility machinery?"

"Q. Well, any kind of machinery,—take a street car company."

"A. Yes, you always want to know what a fellow paid for something."

"Q. Would it be possible for an engineer to value a piece of street railway company property if the books were burned up and he had no records at all?"

"A. Why, yes, then you have no records at all and it is uncertain and we have to resort to that in that case, and it would be
2092 the best possible way we have to get that value."

"Q. Your idea is that you would only take an inventory in a reproduction cost of the property whenever there were no books?"

"A. As one of the ways, yes. I told you this morning when we were dealing with some inventories that the Company resorted to the historical method."

"Q. Take the new telephone building, and it is a pretty good building—

"A. (Interrupting.) A very beautiful building."

"Q. That building cost about \$200,000.00, and the present reproduction cost of the building would be about \$425,000.00 on the basis of the evidence in this case, and now you say its value would be what it cost?"

"A. Well, what we were after in this case is protecting the investors. It don't make any difference and doesn't matter what the property is worth.

"Q. But can you put yourself in the attitude of being an engineer

who is going out to find the value of property, irrespective of whether a man lost money or made money?"

"A. According to what? Rate making purposes?"

"Q. Can you conceive value without rate making purposes?"

"A. No, sir."

"Q. You put a handle on it?"

"A. You ought to have the facts, but I do not mean to say that because a reproduction value, Mr. Frank——

2093 "Q. (Interrupting.) Well, you could speak of the value of a horse, or the value of an automobile, without knowing what they were used for?"

"A. Why, sure; I would want to know whether it was a trotting horse or a dray horse, and with a good record it would, of course, bring a higher price."

"Q. Can't your mind work as fast on a telephone company?"

"A. No, sir; there is no horse racing in the telephone business. I would want to know whether it was for rate making purposes, taxes, or sale."

* * * * *

"Q. Suppose the property cost \$5,000,000.00, but, as you have assumed, it has been badly managed and the present reproduction cost of it was only \$4,000,000.00 but it actually cost the new stockholders \$2,000,000.00,—what would you say is the value of the plant now?"

"A. For income purposes it is the value of the money they put into it."

"Q. Five or two million dollars?"

"A. What it cost."

2094 "Q. Suppose you had another company that wanted to buy it,—you didn't have any matter of rates,—but had a purchasing company that wanted to buy the company now, and it originally cost \$5,000,000.00, the bond holders or the new stockholders have paid \$2,000,000.00 for it and a careful inventory and appraisal, taking into consideration everything they had, going concern value, working capital, and organization, and everything, was \$4,000,00.00, and you were selected as the Engineer by the purchasing company to go and value the property,—what would you tell the purchasing company to pay for it?"

"A. If they purchased the proposition,—not for rate making?"

"Q. Yes, not rate making."

"A. The least they could get it for."

"Q. The very least they could get it for?"

"A. Yes, sir, all the traffic would bear."

"Q. Suppose the man that owned it said it cost \$5,000,000.00 and he wanted \$5,000,000.00?"

"A. And him losing money all the time? I would tell them not to buy it."

"Q. Suppose he would think a little while and say he would take \$4,500,000.00?"

"A. If I could make money on the \$5,000,000.00 basis and the purchaser wanted it real bad, I might advise him to take it; but

if one man failed on the \$5,000,000.00 basis, it is also reasonable that the new owner would have an awfully hard job to make good on the same basis."

"Q. In that case you might recommend to your client to pay \$500,000.00 more than the reproduction figure showed?"

"A. If these people put in that much money,—in funds—the cost of establishing business again,—in that case the company lost money during the period, so they only had \$4,000,000.00 in 2095 real money and lost money in the meantime trying to engage in the business. There you have the cost of establishing business again."

"Q. Would you pay more on that account than if the property had always made money?"

"A. Not necessarily. Have you a specific case in mind?"

"Q. As a purchase proposition?"

"A. As a purchase proposition, I wouldn't recommend to anybody to buy any badly mixed up concern."

* * * * *

"Q. Turning to the last page of your report, where you say the earning percentage is 8.6% for the entire Company. You also have on the second page the rate of earning for 1919 as 8.6%. That is your own conclusion?"

"A. What?"

"Q. That is your own conclusion?"

"A. No, sir, it is a mathematical deduction."

"Q. Did you get that from the books?"

"A. It is a mathematical deduction."

"Q. Eliminating the 4½%?"

"A. I am talking about what the owner makes. The owner talks about confiscation and we show what he makes out of the business here."

"Q. Let's get back to your report. You have here as exchange rental—\$880,439.28, and that, on the basis that you have 2096 used, with all the additions you have made and subtractions you have made, makes, according to your figures, an earning for 1919 of 7.7%?"

"A. Yes, sir."

"Q. Now, you were told when on the stand before that that figure of \$880,439.28 was \$134,000.00 too large, because it had the advance rate under Government operation."

"A. We discussed that quite thoroughly."

"Q. Why didn't you take it out of these figures?"

"A. You collected that much money during the year."

"Q. The present rates in effect are \$5.00 and \$2.00?"

"A. That makes no difference. You collected so much money in 1919 and you made so much money on your investment. Later on, you can come in and show what you did in 1920, but you have got lots of nerve to come here and anticipate this proposition."

"Q. You have made this report, trying to help the Court?"

"A. Yes, sir, showing what you earned. I have said nothing what-

ever about rates, but you made money last year. You may not make any this year."

"Q. How much light does this give the Court on what the present rates will produce?"

"A. It gives the Court the light that you earned this much money last year."

"Q. If the rates last year produced \$130,000.00 more than the rates in effect now, in all fairness to the Court, ought you to subtract that?"

"A. No, sir, we will subtract that this coming year when 2097 you have it happen. You earned this much money and collected it last year. We have nothing to do with the rates——

"Q. (Interrupting.) Do you know what the Court is trying to determine?"

"A. Yes, sir, I am thoroughly familiar with it."

"Q. What is the Court trying to determine?"

"A. Whether or not you are losing money."

"Q. If we are charging the rates now under the City ordinance, they will produce \$130,000.00 less money?"

"A. This year?"

"Q. Yes, than the figure you use."

"A. That will appear in the statement this year."

"Q. It ought not to be taken out?"

"A. No, sir, there will not be anything to take out. You will have a less figure this year. What will you take out?"

"Q. If it produces \$130,000.00 less this year at the present rates?"

"A. It has no bearing on the case at all. You earned so much money last year. We are not getting all the tolls that are coming to us."

"Q. If the present rates had been in effect last year, how much money would we have taken in for exchange rental?"

"A. But they were not."

"Q. Answer my question."

"A. I took a condition,—not a theory. I found you earned that much during the year on an investment of so much money. I had nothing to do with how you earned it."

2098 "Q. The rates last year were \$3.00 for residences and \$7.50 for business telephones, with some measured rates, six or seven months of the year under Government operation——

Mr. Howard (interrupting): You have that too large, Mr. Frank,—only May, June and July.

(By Mr. Frank:)

"Q. From February 1st,—six months."

"A. It wouldn't have made any difference if you had a ten dollar a month rate. Whatever price you charge on, the fact remains that you collected the rental,—\$883,439.00, and if I should take an alleged computation based on some condition or theory—what I say here is telling what this Company earned last year. The first

of July, after you had six months experience of this, I looked at your report and I noticed that you were earning less."

Mr. Howard: You are mistaken about that, Mr. Frank. We are not contending that these abnormal revenues should be carried into the returns, but it is a fact that these rates were put in under the injunction only about three months and you had them about three months and the people were not paying their telephone bills.

Mr. D. A. Frank: They paid every bill, or we would have cut them off. Didn't you pay the rate for six months? If you hadn't, you would have been cut off.

Mr. Howard: I didn't pay any at all for a long time, 2099 pending the injunction. I paid it all later. I may have paid it for the six months. We are not contending this abnormal rate should be carried into this return, if that is the point you make.

* * * * *

"Q. The City ought to have about 100% of the tolls, plus about \$200,000.00? Why are you so modest,—why don't you take it all?"

"A. I thought you told the truth and had it all in."

"Q. Why don't you take the income of the whole Company?"

"A. Only the income that Houston earns."

"Q. If the Court asked the question, to tell him whether or not these rates were too high or too low, all you would care to tell the Court would be last year—"

"A. (Interrupting.) There is no question about that so far. They had a pretty good year last year."

"Q. A good year last year with \$130,000.00 increased exchange rental from the Government rate?"

"A. Yes, sir, and I imagine by the first of July you are going to have a pretty good idea of what you are doing this year. You are anticipating. You can't anticipate about things of this kind."

"Q. Did you know that the \$5.00 and \$2.00 rates have been in effect for several years?"

"A. Yes, sir, I think so. After a year of that you can find 2100 out how much you earn in that one year by those rates,—it don't matter whether two, five, eight, ten or twelve dollars."

"Q. You think—you wouldn't undertake to tell the Court what the present rates are producing?"

"A. About the first of July, after I see the quarterly statements, I can tell, and then you can recover on the deficit theory. You have still got a chance to recover."

"Q. Your advice to us, as a telephone expert, is to rest easy and it makes no difference how low the rates are,—in some sweet by and by we will get our money back?"

"A. Be diligent. That is your business. You are not hurt, you will not be hurt by waiting until the first of July. If you have a deficit, you will be entitled to capitalize it."

"Q. The best way to do would be to set down and wait and keep losing money?"

"A. You are holloing before you are whipped."

"Q. Keep losing money, and when you lose it capitalize it?"

"A. Your losses during this next six months wouldn't hurt you."

* * * * *

"Q. Our income last year was \$130,000.00 more on the rates then in effect than they can possibly be this year, with the present rates in effect?"

"A. You have a very fair assumption that you are going to have a little shortage, but wait until you get it and can see it reasonably."

2101 "Q. Speaking about the local exchange losing,—that is true, isn't it?"

"A. It stands to reason, there is \$130,000.00 difference."

"Q. You have \$4,855,392.00 as the total investment,—then \$130,000.00 would be about 3% of that?"

"A. Yes, sir, but you haven't lost it yet. Wait until you lose it. You have got it here, you earned it this year."

* * * * *

"Q. If we had the present rates last year we would have earned \$130,000.00 less?"

"A. Yes, sir, and it will show in the first six months this year."

"Q. That would be a 3% loss on your own valuation?"

"A. You haven't lost that. You earned \$885,000.00 last year."

"Q. Don't you know that it is very easy to prove,—very easy to prove the fact that the Government rate last year did produce \$130,000.00 more than it would have produced with the new rates?"

"A. The rates you had last year produced \$880,439.00. That is all I know and all I am interested in, and all anybody ought to be interested in."

* * * * *

"Q. According to your own figures, when you have eliminated quite a good deal—when you start with figures you call Company figures, over \$3,000,000.00, and cut them down to \$2,672,000.00, you start with a figure that is not accurate and you have taken the very smallest percentage you possibly could of the toll, and even on that—"

"A. (Interrupting.) I deny that, absolutely."

"Q. And even on that basis for last year the earning was 7.7%?"

"A. Yes, sir, and I find from your questionings this morning that there is about \$200,000.00 of tolls that belong to this town that they have not gotten."

"Q. Tell us how they could be allocated to Houston?"

"A. They could be."

"Q. In what way?"

"A. Plenty of ways."

"Q. Tell us how, so we can get your story with all of its details."

"A. I will keep that. When you come into court and tell us that of that \$4,600,000.00 toll earnings that \$3,000,000.00 originated here, you let the cat out of the bag."

"Q. How would you divide it?"

"A. I don't know. I want to find out what it is."

"Q. You want to go off and make some other figures?"

"A. No, sir, I am satisfied to rest on this record without any further figures. This morning you unhitched a horse in your own pasture, old man."

"Q. We have a statement here, Scott's Exhibit No. 42, showing that the last four months of last year the Southwestern Telegraph & Telephone Company lost \$49,804.00 before deducting depreciation."

"A. You folks are the best losers on paper I ever knew."

"Q. That was in the City of Houston?"

2103 "A. Yes, sir."

"Q. Would you think, then, you would have to go further than that in order to come into court and ask the Court to give us relief?"

"A. I don't know what Scott did here,—I am not interested in what Scott did. I found in 1919 that you had a very comfortable year, and we ought to, right now at this particular time, January, February and March, be able to show about what you earned during that period. You come in here and say if you had done so and so. You actually collected and kept in your treasury this much money. It is absolutely absurd, because you made so much last year and have got it in your pockets."

"Q. Have we got it in our pockets for this year?"

"A. I don't believe you are broke."

"Q. If our rates will produce \$130,000.00 less this year than last year, you still think that we ought to wait?"

"A. We don't know until we get all these tolls in here."

"Q. You know the same rates are in effect now that were in effect two years ago?"

"A. You would not be in Court if they were not, but you are crying before you are hurt on this proposition right now. You have all the protection in the world. When you can tell the Court you are losing money—but you can't today."

* * * * *

2104 "Q. Look at your report. When you got down to the total Houston receipts, \$1,342,535.46, including this \$130,000.00 made from the Government rates, you have "Less Instrument Rentals, \$13,250.00." Your original report put in the 4½% payment. When did you change your mind about the 4½% payment."

"A. I didn't change it."

"Q. Why did you leave it in your first report and cut it out of the second?"

"A. That was what I found. This is a statement of what the owner of this property is making in Houston."

"Q. And in your Exhibit No. 1 you have "Less $4\frac{1}{2}\%$, \$43,-528.06." Why did you put in the $4\frac{1}{2}\%$ there?"

"A. I found those figures at the time."

"Q. You found them?"

"A. Yes, sir, and I said at that time: "At this time I don't care to dispute these figures. I expect to, if I am ever called back again."

"Q. You put in $4\frac{1}{2}\%$ in your first statement and cut it out of the second?"

"A. Yes, sir."

"Q. Did you experiment, to see whether or not you could do it and still get 7% or 8%?"

"A. The owner of this property is making this complaint and is charging himself with a lot of alleged services, just like a farmer owning his own business charging himself with his own work."

2105 "Q. I ask you, on your oath, on this stand, whether you would have cut out this $4\frac{1}{2}\%$ if you could have arrived at your 7.7% any other way?"

"A. I didn't have anything to do with it. I never figured ahead in my life, and never will."

* * * * *

"Q. You have total receipts of \$1,329,285.46 by eliminating the $4\frac{1}{2}\%$?"

"A. Not all of it. Part of it is there."

"Q. You have maintenance—\$110,675.96?"

"A. Your own figures."

"Q. Is that all the maintenance?"

"A. No, sir, you have some reconstruction during the year."

"Q. Is that all the maintenance?"

"A. As far as I know; that is the record."

"Q. That is the maintenance in the City of Houston?"

"A. Yes, sir."

"Q. Now, you have eliminated 10% of the long distance——"

"A. (Interrupting.) Your maintenance men run out of here and repair these lines. It is absolutely logical; they are here and the repairing is done from here."

"Q. On page two of your report you have maintenance, \$112,-441.00. You didn't inquire how much was toll maintenance?"

"A. That is all maintenance. I didn't care about that, because all I wanted to know was all the maintenance, because——"

2106 "Q. (Interrupting.) This report here, Mr. Kelsey, was the report put in for the City of Houston,—just the local maintenance——"

2107 "A. (Interrupting.) You have got this town charged with a great deal more than its share."

"Q. You didn't even try to find out how much toll maintenance there was in the State of Texas?"

"A. No, sir, I didn't. I am not interested in that. You do it from here and every point around here. It is in there."

"Q. You didn't inquire what the toll maintenance was?"

"A. Maintenance in the Houston District, and there it is, and a pretty liberal maintenance, too, when you subject it to the test. It must be pretty good, because your plant is 93% good."

"Q. Our toll property is in pretty good condition?"

"A. It has got to be."

"Q. And has to be maintained?"

"A. Yes, sir."

"Q. Do you know what amount of toll maintenance there was in the State?"

"A. I didn't care about that."

"Q. If the figures are for company toll maintenance, \$211,109.00——"

Mr. Howard (interrupting): I would rather you would ask questions, and not testify.

"Q. Is that the figure?"

2108 "A. These men are on your pay roll, and you know it is common practice."

"Q. You are not taking the position, are you, that there was no toll maintenance?"

"A. It is in there."

"Q. The figures you have got here are the figures we use here for the local maintenance of \$110,675.00."

"A. That is the total maintenance. It is proved out when you go to compare them."

"Q. Where did you get that figure, \$110,675.00?"

"A. That is your figure."

"Q. For local maintenance?"

"A. You always put in your best figure when you get into a rate case. I have never known you to be backward and bashful."

"Q. Did you ask anybody about what the toll maintenance was?"

"A. No, sir; I knew you run your maintenance men out of here; they got their supplies from this office and gasoline from this office."

"Q. The testimony in this case——"

"A. (Interrupting.) You can get any testimony in this case that you want."

"Q. Sworn to by reputable men, is that this \$110,675.96 is for local maintenance."

"A. ——"

"Q. May have been him, but that is the testimony."

2109 "A. Your toll maintenance is in there."

"Q. If there is an additional amount of \$211,109.00 for toll maintenance——"

"A. (Interrupting.) Then that would be \$20,000.00."

"Q. That would be \$20,000.00 for expense in excess of what you have counted?"

"A. No, sir. You can't show, to save your life, a toll maintenance charge in this district of \$20,000.00, in Houston and what goes out of Houston,—Houston city."

"Q. You are taking a certain percentage of the entire State, aren't you?"

"A. No, sir."

"Q. Didn't you take a certain percentage, 9.4% of the entire toll lines?"

"A. Yes, sir."

"Q. Wouldn't it be fairer, even on your theory, to take the same percentage of the company's toll maintenance?"

"A. No, sir, because no maintenance—you can't show any maintenance around here of even \$3,000.00."

"Q. Why around here?"

"A. That is all we are interested in—right around Houston."

"Q. But you are interested in taking part of——"

"A. (Interrupting.) Repairs by Houston."

"Q. Taking part of the plant all over the State——"

2110 "A. (Interrupting.) No, sir."

"Q. You didn't take just 9.4%?"

"A. I have——"

"Q. (Interrupting.) You took 9.4% of the entire State. Why shouldn't you take 9.4% of the entire maintenance?"

"A. It is in there already. Your pay roll shows your toll line reserve."

"Q. But your testimony is that there is no toll maintenance; is there?"

"A. I know it; but I saw it in this report that Mr. Lyndon has. Prove it by Lyndon."

"Q. Show what it is."

"A. Prove it by Lyndon. He will show you."

"Q. You are content to rest on that proposition?"

"A. I will take my professional oath that \$110,000.00 covers all the maintenance you have around this territory."

"Q. But you haven't just taken the property around this territory; you have taken a percentage of the entire State."

"A. I am talking about the Houston toll line the people pay for."

"Q. You took a percentage of property for the entire State, did you not?"

"A. No, sir, I haven't touched on that at all."

"Q. Didn't you take 9.4% of the property for the entire State?"

"A. For toll purposes."

"Q. Why didn't you take an equal per cent of the maintenance?"

2111 "A. It is already in there."

"Q. How much does this \$110,000.00 amount to per month per station?"

"A. My daughter could probably figure that out."

"Q. On the basis of 27,000 stations, it would be about thirty-three cents per month?"

"A. What are you talking about? Your maintenance ought not to run over \$5.00 per station. You can't spend the money."

"Q. \$110,000.00—\$5.00 a station."

"A. It would run \$3.50 per station."

"Q. Take \$5.00 a station and 27,000 stations."

"A. Around \$110,000.00. I am talking about four and a half,—four dollars and four and a half."

"Q. You said this is high, and that is one of the items we are proud of."

"A. You are an underground plant."

"Q. That is one item we think is a big attainment of the telephone company."

"A. That maintenance?"

"Q. Yes, sir."

"A. You have got to attain some more."

"Q. You said \$5.00 a station?"

"A. I am talking about the average plant. My goodness alive! the maintenance of the North Dakota property, scattered over a cold-ridden country, never run over \$4.00."

2112 "Q. Why did you mention \$5.00?"

"A. I know of companies that run to \$5.50. They didn't have this underground plant."

"Q. Five dollars wouldn't be an unusual amount?"

"A. Yes, sir, with an underground plant,—it would be absolutely absurd."

"Q. With twenty-seven thousand stations?"

"A. Yes, sir."

"Q. \$135,000.00 a year at \$5.00 a station?"

"A. Yes, sir, would be an overhead plant."

"Q. We have charged up only \$110,000.00."

"A. I thought that was what you actually paid for maintenance."

"Q. We charged it up because we actually paid it."

"A. I mean——"

"Q. (Interrupting.) You are naturally suspicious?"

"A. I am getting to be."

"Q. You were born that way?"

"A. No, sir."

"Q. Your second item is reconstruction; you know what that is?"

"A. Your books show that that is reconstruction."

"Q. \$9,635.04?"

"A. Yes, sir."

"Q. When on the stand before I told you that was wrong. Did you make any effort to find out and get the right figures?"

2113 "A. If that is wrong, you gave us the wrong report. You are in the habit of that. I doubt it very much. You have a lot to say about reconstruction. You have one year \$149,000.00 and \$125,000.00, but at no time did you need a figure higher than the reserve I gave you for that."

"Q. If you want me to, I can give you the figures to work with,—the realized depreciation by years."

"A. You should have given me those figures——"

"Q. (Interrupting.) They were given you when on the stand before."

"A. No, sir; when did you give them to me?"

"Q. When on the stand before."

"A. For what years?"

"Q. Beginning back as far as 1909."

"A. Beginning back further than that. You know you can't go back any further than that. You can't say this whole thing has got to be done in three years. I want your twenty year record, since 1898, and I will tell you what the record from now on will be."

"Q. You charge up for reconstruction \$9,635.04. That figure was an extraordinarily,—an extraordinary item?"

"A. All of those items are extraordinary. Reconstruction is extraordinary and couldn't be charged in maintenance."

"Q. There was no reconstruction figure, and I told you."

"A. No, sir; you said that year was unusually good, but the year before you did quite a lot more. If you will show this Court, if you are fair enough and frank enough to show your absolute
2114 record of reconstruction since 1898, I will abide by anything you find."

"Q. Why 1898?"

"A. Because you start in with the common battery system and commence to put on the airs you have today."

"Q. Can't you be honest enough——"

"A. I want you to be honest enough to give this Court the record since 1898."

"Q. We are working on 1919."

"A. I am working on the basis of 1898 up to now."

"Q. You have used a figure that I told you was wrong."

"A. I asked you for all the figures and you seem to be afraid to show what happened during the last twenty years,—your experience here."

"Q. Mr. Kelsey, what difference does it make what we spent twenty years ago?"

"A. I want to know what your maintenance was, how big you were, and then you have something to tell the Court. You can't tell the Court you spent all of your reconstruction in three years. That has to be amortized and covered over a period of years."

"Q. In the year 1912 we spent \$183,903.00."

"A. I wouldn't be surprised; you might have spent more than that."

"Q. In 1913 we spent \$121,396.00."

"A. That sounds like it. Your record is almost typical."

2115 "Q. In 1914 we spent \$67,916.00."

"A. I would not be surprised."

"Q. In 1915 we spent \$112,846.00."

"A. That is all right."

"Q. And in 1916 we spent \$121,681.00."

"A. Yes, sir."

"Q. And in 1917 we spent \$85,720.00."

"A. Yes, sir; getting down a little."

"Q. During the war, wasn't it?"

"A. Yes, sir; what was it in 1910?"

"Q. In 1919 we spent \$69,075.00."

"A. What was it in 1910?"

"Q. Let's finish this. In 1919, \$32,178.00. On account of the

Government having control of the operation of telephone lines during that time, do you know that the Postmaster General didn't allow any reconstruction?"

"A. No, sir; he had to allow a lot of things. He did in Cleveland,—\$365,000.00, which they tried to make the Government pay, and the people paid it."

2116 Cross-examination.

Questions by Mr. D. A. Frank:

I understand that the valuation that I have used on the first page of my last exhibit does include something for the intangible assets item of \$700,000.00, or the difference between what was actually paid for the property of the Houston Home Telephone Company and the structural plant that went on to your books; that has been my impression. I understand that it does, and then in that Million, Three Hundred and Seventy-four Thousand, Five Hundred and Sixty Dollars you have accounted for a great deal of it. That figure is the amount of money put into this plant since 1914 furnished me by Mr. Lyndon and his book accountant. If there is \$700,000.00 of that that is intangible property, it is not necessarily entirely all right to have it in; according to the conditions, I think it is in there, because, otherwise, \$1,374,000.00 has resulted in only Forty-five Hundred telephones, there is something radically wrong. I get the idea that there was Four Thousand Five Hundred telephones, because in 1914 you had Twenty Thousand and some telephones, and later on you had Twenty-six. According to that, there are Five Thousand additions, and that is very ridiculously high.

"Q. At the beginning of 1914 we had Twenty Thousand
2117 and Sixty-six stations, and in 1919 we had Twenty Thousand, Seven Hundred and Seventy-five stations?"

"A. No.

"Q. That makes a difference of Seven Thousand, Seven Hundred stations.

"A. No. Twenty-six Thousand, Five Hundred is the figure that I have used, and that was given to me as your average number of telephones in 1919."

If you have got Seven Thousand stations at that expense, that is absurdly high for stations, even at this time. That is pretty near \$200.00 per station. I am inclined to believe that the Twenty-seven Thousand is included in that. You can find that out and show the Court clearly by Mr. Lyndon and his accountants about that.

If you paid \$1,300,000.00 for the Houston Home Telephone Company's property, you were very foolish.

"Q. If it is admitted that we were very foolish, if we did, and we had the actual value of the plant of the Houston Home Telephone Company, that we put on our books as something over \$600,000.00, leaving \$700,000.00, what would you say ought to be done about the \$700,000.00?"

"A. Well, there is no question but what the letting in of the sec-

2118 ond telephone company in Houston was an economical error on the part of the public, and that amount should be charged to the people in some form or other, but it should be amortized over a period of years, and carried as a permanent account."

"Q. That is right. Now, the \$700,000.00 for the present, though, under the Interstate Commerce ruling, would have to be carried in your plant account or in your capital account."

"A. (Interrupting.) You mean indefinitely?"

"Q. Not indefinitely, but would be carried as an intangible and amortized,—that is correct?"

"A. No, you can't charge that entire amount up to one year—it's 1919,—it should have been reduced by this time considerably, very materially."

"Q. It has been reduced."

"A. How much reduced? Before we get into this discussion, how much has it been reduced?"

"Q. I am not on the stand; but the \$700,000.00 ought to be carried into that plant account until it is amortized?"

"A. We ought to know that before we go into this. How much is it? I have found it awful hard to get information from you and I think you ought to enlighten the Court as to what that has been."

But the \$700,000.00 ought to be carried into that plant account until it is amortized. I always insisted that the admission
2119 of the second plant was an economical error, and the public is responsible for it, although the public is not always wise in their selections; so that, if the balance of the intangible that has not been wiped out has not been amortized yet, if that balance has not been included in the Thirteen Hundred and Seventy-four Thousand Dollars, it ought to be included, but in addition to that we ought to have a most thorough investigation of what that Thirteen Hundred and Seventy-four Thousand Dollars is for. It is abnormally high. I have not seen the evidence, but I can not see how any evidence can justify a figure of almost \$200.00 per station.

I admit that what I tried to get to start with in 1914 was the valuation of the Company's property for rate making purposes at that time.

"Q. Well, for rate making purposes. Now, if there is about \$700,000.00 left out of that, that would make an additional \$700,000.00 that ought to be added on, wouldn't it?"

"A. Why, I think fundamentally that would be true, if it were the fact."

"Q. Now, coming to your exchange rental. If the Master desires to know what the income would be for the first year, you would have to calculate on the basis of what the Company was spending now, wouldn't you?"

"A. I would suggest that he wait and get the quarterly
2120 statement and see what it is."

"Q. But the Court can't wait, of course, for time to go by on a thing of that kind."

"A. Yes, and I said yesterday, you had rushed in here before you were hurt."

"Q. Do you still stick to your statement that we ought not to subtract the \$130,000.00 from the \$180,000.00?"

"A. Certainly not, because you were dealing in 1919. The question of what you earned in 1920 is an entirely different matter. In that case you may show a loss; I have no way of knowing yet, but you have so many factors entering in here in the way of tolls, miscellaneous sales and rentals——"

"Q. In 1919, if the exchange rentals were \$180,000.00, and included in that was \$130,000.00, due to the accrued increase rates under Government control, then if the rate would produce the same in 1920, merely for exchange rentals, it ought to be reduced by \$130,000.00, oughtn't it?"

"A. No, no; you can't tamper with your 1919 business. You have a certain earning for that year and I don't see how you can go in and juggle and manipulate."

"Q. Mr. Kelsey, does it take any juggling to determine that a certain number of telephones at \$2.00 per station and a certain number of telephones at \$5.00 per station will produce \$130,000.00, or more, if you make the rate \$7.50 and \$3.00?"

"A. It would be very rank juggling in this case. You
2121 know the present part of this year ought to tell the story.

"Q. You mean to say, then, that for 1920 an estimate for the exchange rentals would be \$130,000.00 less than the figure you have used?"

"A. It might not be."

"Q. You can't say that. Will you explain to us how it would be possible for the same number of stations to produce just as much money at the \$2.00 and \$5.00 rate during 1920 as was produced in 1919, with the \$3.00 rate and \$7.50 rate in force for six or seven months of the year?"

"A. But so far as your rental is concerned, that is very obvious; but you know your company is a financial company as well as a long distance company; you have many ways of earning money; you can apply that to your rental and it would undoubtedly be \$130,000.00 lower."

"Q. We are talking about the Houston exchange."

"A. So am I, and as the Houston exchange we share in all the successes and failures of the home company."

"Q. No, Mr. Kelsey, Scott's Exhibit No. 42 shows exactly what the four months ending December 31st, 1919, produced under the present rate. Would that convince you in any way?"

"A. It doesn't interest me whatever; we are dealing in the 1919 report; that is your fiscal year, you know."

"Q. You would not be interested in knowing what these rates produced during the four months they were in effect?"

2122 "A. No; I would like to begin at the first of the year, under all conditions. A very proper test would be the first six months of this year, to give this Court an accurate idea. Conditions change; conditions in 1919 have nothing to do with 1920. Your toll earnings are different, your rental earnings are different; they all ought to be in here. The more I get into this case, the

more I think we ought to have some information—some more information than we have had. I took your word for a lot of these figures, but I begin to suspect some of them."

"Q. What is the basis of your suspicion?"

"A. You gave one figure of Nine Thousand yesterday, and now you say Thirty Thousand."

"Q. You say that the Nine Thousand was extraordinary repairs?"

"A. That is what I call it."

"Q. And the \$32,000.00 was replacements?"

"A. But it was in your maintenance account."

"Q. It is very proper to be in our maintenance account."

"A. We credited you with it; you spoke of a mysterious toll yesterday——"

"Q. (Interrupting.) Isn't there something further back of your suspicion, Mr. Kelsey?"

"A. No, the greatest suspicion I have is that I haven't all of the figures."

"Q. Isn't your suspicion due to the animus you have towards the Western Electric?"

"A. No."

"Q. The American Telephone Company?"

"A. Not the least bit of suspicion towards any of them."

"Q. Towards the Bell Company and its employees?"

"A. We have stock in the Bell Company. I have known those gentlemen for years. In fact, the Bell Telephone Company is my meal ticket—my extra money. I would hate to have them——"

"Q. (Interrupting.) What do you mean by your "extra money?"

"A. This work that I do around here in Houston, Cleveland and Minneapolis. The A. T. & T. has been one of my best little spending monies that I have."

"Q. You make your spending money off the A. T. & T.?"

"A. Yes, sir; I simply am forced on the pay roll against the A. T. & T. all the time."

"Q. You make your extra money that way?"

"A. Yes; the City of Houston asked me to come down here and make a study of this case. If you did, I would do it for you."

"Q. Would your testimony be different?"

"A. It might be, but you know my ancestors never had that little boat called the Mayflower."

"Q. Would your testimony in this case be the same if you had been representing us?"

"A. Well, I should say it might not be. A man has to admit that he has to serve his clients, necessarily, and get the best points out of each case. Attorneys have to defend criminals when they know they are guilty sometimes."

"Q. Where a man swears,—you know, an attorney does not swear."

"A. It is a good thing they don't; they would all be in the penitentiary; that is the advantage you have over a civilian."

"Q. Now, one of the reasons you have got it in for the Western Electric——"

"A. No, I haven't. I have the greatest admiration for the Western Electric Company. I go around there a great deal and visit the boys and go over their plant. They are glad to see me out there. I buy their goods."

"Q. You stated yesterday that they ruined you by flooding the country with telephones at fifty cents?"

"A. They didn't ruin me. They tried to, but they couldn't do it. You see, there is that lawyer part. I said that they tried to sell them, but after they found out they could not sell them, then they tried to rent them and they didn't succeed very well."

"Q. Did you rent any at fifty cents?"

"A. No, I sold them outright. They stand in line wanting our stuff."

"Q. The Western Electric couldn't rent them at fifty cents?"

"A. The Bell Company rent them; you see, for years the
2125 Bell Company and the Western Electric Company tried to run a little missionary department and tried to rent,—get them to use your apparatus, but somehow or another, after they *try* it for a while, they didn't see the virtue in it that you folks do."

"Q. Do you know what the regular rental of these instruments are?"

"A. Yes, fifty cents a year."

"Q. Where?"

"A. Everywhere. I never heard of any independent company ever having its instruments left on them."

"Q. Of course, you have kept up with the rental of telephone instruments, haven't you?"

"A. Well, yes, you know, almost every telephone man in the United States has come to me with his troubles and told me his problems. In fact, we have a free consulting bureau there."

"Q. But while you were a professor——"

"A. (Interrupting.) A professional baseball player,—don't leave that out; I am proud of it. I am more proud of that than anything. Don't leave that out of the record."

"Q. You didn't have time to keep up with the prices on telephone instruments?"

"A. I had to keep up with it, because they were coming to me with it."

"Q. Did you know that in the City of Dallas, right there, there is the Dallas Telephone Company that has a great many telephones, and that we pay them a dollar a year for the rental of their
2126 instruments?"

"A. Oh, you can do anything between yourselves. You have a very great faculty for making wonderful contracts."

"Q. Did you know that there were one hundred telephone companies in the United States today that were paying a dollar a year for the rental of the instruments?"

"A. Do you own them? That is the thing that interests this

Court,—is what that investment of \$13,000,000.00 is. Then we might believe some of that stuff."

"Q. The testimony in this case shows that the rental — worth \$1.10 per instrument per year."

"A. Whenever you can get control, you can make it worth \$2.00; but I am talking about free and uninterrupted; a man who has his own judgment in this matter never would pay more than fifty cents; you can never get him to pay it."

All the independent companies that are not connected with your company are not all paying a dollar a year; they buy their own telephones. I sold more Kellogg telephones in Texas than in any other State in the Union; it is one of our best States. They always did get fifty cents. I am talking about independent companies; none of those fellows you make a gentlemen's agreement with. I do not now know of one company in Texas that is getting their rental at fifty cents; out of two hundred and sixty-two companies, I do not know of any now; I do not think that they would pay fifty cents for your telephones. I don't think any of them wanted such an agreement. If they were left to their own volition, they would not pay forty cents; they would buy them in preference; they can buy a better telephone than they can rent from you.

"Q. Mr. Kelsey, your division of the long distance line leaves out, of course, the Two Hundred and Forty-five Thousand, Nine Hundred and Thirty-nine connecting line stations in Texas?"

"A. Oh, I don't know anything about that; you know that has nothing to do with what your company earns."

"Q. It leaves out of consideration the toll property in about forty-seven other States of the Union, that occasionally are used?"

"A. Your company had left for the year \$4,600,000.00 from its toll activities."

"Q. Now, during the year, or the last two years, the City of Dallas with thirty-seven thousand stations, or thirty-three thousand stations, has been sold by the Southwestern Company."

"A. (Interrupting.) To themselves?"

"Q. (Continuing:) To the Dallas Telephone Company."

"A. To themselves."

"Q. There are something over thirty thousand stations, Mr. Kelsey, that you did not include."

"A. Oh, yes, the earnings that your company got from those stations appears in your annual report, and you netted \$4,600,000.00. It don't matter whether you stole it or how you got it,—you have got it.

"Q. Suppose we are paying the telephone company in the City of Dallas a certain percentage of the originating tolls for handling the toll business there?"

"A. You are paying them that twenty-five per cent, unloading with all the expense."

"Q. The balance of it, seventy-five or more per cent of the tolls, originating in Dallas, is included in this four million dollars, isn't it?"

"A. Not necessarily, oh, no. The net income that your company

gets out of all transactions amounts to \$4,600,000.00. You can't escape that. Now, you may have an agreement with your combined company, but the net results appear in your accounts. You are not reporting to anybody else that you are not earning this \$4,600,000.00. That isn't a gross toll earnings; that is the net toll earnings belonging to your company."

"Q. What has been taken out?"

"A. Your own expense. That is the net proceeds.

"Q. The expenses have been taken out?"

"A. All of your expenses down below,—maintenance, depreciation, traffic, commercial, general, taxes and all."

"Q. Did you ask anybody that question?"

2129 "A. I know that this is all the money that you expended in your business during the year,—running your entire business for the entire company. Do you have a secret fund?"

I know that the maintenance expense of \$1,112,441.00 had a maintenance charge in it of over \$200,000.00 to the tolls, and what is your supervision of maintenance in Houston but your general loading of the whole company? Oh, yes, that has something to do with it. It is the maintenance of the whole company loaded, that you could not apply to Houston locally; you turn around and apply it generally. It is absolutely unthinkable that this town would spend \$18,000.00 for maintenance in supervising a little plant of this kind. That is the kind of maintenance that you can't localize in this town, and you turn around and generalize it. After I left last night, I got to thinking, and I said, this toll maintenance is there, of course, but it is camouflaged beautifully in what they call supervision. I think you have said a great many times that the books are kept in accordance with the Interstate Commerce Commission's rules. I do not know that to do what I have just said that would cause them to penalize you; you have got a perfect right to localize all of your earnings.

"Q. Do you know that some of the calls for which this \$4,767,000.00, included in this, originated in Dallas, Waco, Marlin, Temple, Tyler——"

2130 "A. (Interrupting.) Of course it did, but that was the net result of your transactions."

"Q. (Continuing:) Sherman, Denison, Denton, McKinney, Texarkana, Greenville, Brownwood and San Angelo, and that under your system these towns would not get any allocation at all of the toll plant."

"A. Why, they have all had their allocation. Why didn't you put Halifax in, and Nova Scotia? That don't make any difference. In your expenses, where is your deduction for expenses and commissions paid? This is your net tolls. What are you talking about? All mileage charges have been settled with McKinney, Sherman——"

"Q. (Interrupting.) Mr. Kelsey——"

"A. (Interrupting.) Let me name them all. With Dallas and all those other points, that has all been settled and this is what is left. That is the pride and glory of the Southwestern Company,—

that they are earning almost as much tolls as they do in rentals. You keep all of your rentals and this much is what you keep of the tolls. It is a wonderful concern."

"Q. Let me ask you if one hundred per cent is paid to the City of Houston, if we are not putting something over on the connecting companies?"

"A. One hundred per cent of all the tolls that are left belong to the company."

2131 "Q. Just take any particular call now,—a call that goes from Houston to Dallas?"

"A. Yes."

"Q. And is paid for in Houston."

"A. Yes, sir."

"Q. And costs \$2.50."

"A. Yes, sir."

"Q. Now, your idea is that that whole \$2.50 ought to be paid to Houston?"

"A. Yes; supposing Dallas calls Houston and they pay \$2.50 out of that net,—who keeps that in that case?"

"Q. All right; let's suppose that a call starts at Waco and comes to Houston over the Texas long distance lines?"

"A. According to your figures, you don't get any credit for that at all. That is why I say that I am getting suspicious of your accounting, because you showed yesterday a million dollars that you have not got credited."

"Q. The entire company would get twenty-five per cent of the call. Oughtn't we to get the additional seventy-five per cent, or the whole one hundred per cent of it?"

"A. No, no; you have what is left. You pay them an originating commission, and then you have your mileage settlement. You get the mileage; I don't know what that is."

"Q. There is no mileage settlement."

"A. That is, over your lines."

2132 "Q. No, the Texas company,—not our own lines."

"A. That makes no difference,—what you get; it is apparently credited up in Dallas instead of here, in a call of that kind."

"Q. I am asking you if it wouldn't be fair if the telephone company gets one hundred per cent of this commission?"

"A. No, not at all; that has nothing to do with this case. You don't seem to understand it, and I don't think you want to."

"Q. Do you understand it?"

"A. Absolutely. I have been off this since 1904."

"Q. Does anybody in the world believe in this theory but you?"

Mr. J. D. Frank: Any Court ever follow it?

"A. Well, the Dominion Railway Board accepted our views of one hundred per cent. Mr. Bloom went up there and tried to put over seventy-five per cent. Mr. Bloom said: "I am going to be liberal and allow seventy-five per cent." I said: "Mr. Bloom, you are going to be liberal and allow one hundred per cent"—and the Commission allowed it."

"Q. You testified in the Birmingham case, didn't you?"

"A. Yes, you bet I did. And tried it well. That is the first time you folks ever loosened up and allowed it."

"Q. Did the Commission allow it there,—did they allow it there?"

"A. Why, certainly they did; it was not protested."

2133 "Q. We have the opinion here; I want you to take the opinion and find it."

"A. You find it. You have been talking about that Birmingham case and four-flushing about it; now come clean on it. The first crack out of the box you sprang Birmingham on me, and then you retreated."

"Q. Then you went to Cleveland and you tried the same thing up there. Did they pay any attention to you at all there?"

"A. You bet they did."

"Q. Did they?"

"A. Yes, sir."

The Chairman of the Commission did not say that there wasn't any use of cross examining me. You are the first Bell attorney to cross examine me for quite a while, and I am greatly obliged to you for it. They did not cross examine me up there at Cleveland; I wish they had; I would have filled that record with something the Commission wanted to know. The City of Cleveland,—the conditions there are entirely different; Cleveland is an isolated concern and connected with no outside concern.

I did not say I had testified in three hundred cases; I have appeared for probably a thousand times.

2134 "Q. Did you ever ask for one hundred per cent of the tolls in any other case besides these cases?"

"A. In Kansas City and Montreal; we have always asked for what we took in. We tried our best to analyze this situation. You all never come clean on this. If you didn't have all the expense of your tolls loaded in here, it wouldn't look so bad. but you have got everything in here loaded with as much as you can get."

"Q. Well, we will clear that up before we get through, to your satisfaction."

"A. I hope you do."

"Q. What per cent, ordinarily, of the subscribers in a town like Houston use the long distance service?"

"A. Well, not a very large per cent. I don't think in Cleveland over thirty per cent of the subscribers used long distance."

"Q. Then there is seventy per cent of the local subscribers who don't use the long distance to amount to anything?"

"A. Oh, yes; your telephone business—ninety-seven per cent of your calls are local."

"Q. Then, if your system of allocating the long distance tolls to the local exchange is sound, Mr. Kelsey,—and I am asking you now as a telephone expert,—if that is sound, then if you had a toll line—had toll lines that were not making any money,—say that they were losing money,—you ought to raise the rate in the local exchange in order to take care of it?"

2135 "A. Why, that is done. We always, in a rate case, show that a company is losing money. You folks for years said

that you never could separate your local and long distance, and if you were losing money in your long distance business, why, naturally, you have got to get an income from somebody, and you reach out for the nearest relief, which is through getting your local rate raised."

"Q. So your idea is, if we would lose money in the long distance business, we ought to penalize the local people for it?"

"A. No, you have revenues of all sorts which you are charging them for."

"Q. Then, your idea——"

"A. (Interrupting.) To get right back, it is just as expensive to have these long distance people ready for you as it is to use it."

"Q. Let's assume the case, now, of where the toll lines were not making very much money?"

"A. I know, but you can't assume that condition in Texas, because you are making money."

"Q. Can't you think of that, Mr. Kelsey?"

"A. Yes, I know of lots of long distance companies that are not making money."

"Q. Name one that isn't."

2136 "A. The long distance business—I don't think the Ohio State ever made any money on the long distance business."

"Q. Well, name some town in Ohio that would be connected with the Ohio State Company."

"A. Why, Cleveland, Columbus, Dayton."

"Q. All right, take Columbus, for instance; if you were testifying in a case at Columbus and the long distance lines were not making any money——"

"A. (Interrupting.) Yes."

"Q. (Continuing:) Would you allocate a part of the long distance line to Columbus?"

"A. If they were locally owned by the same concern, but they were separate companies. You wouldn't have any trouble in this case if you had a separate long distance company."

"Q. Do you know of any case where they are not separate?"

"A. Yes, in the North Dakota Independent,—we had one pot for the whole thing."

"Q. In the North Dakota case, did you allocate a part of the long distance lines to the local exchange?"

"A. We always did,—every dollar they took in."

"Q. So that if you were making twelve per cent in the local exchange alone and allocating a part of your long distance lines, you could cut your percentage down to six per cent, you would do that?"

2137 "A. Oh, we did, whether we lost money or made money on our tolls, lost or made money on the rentals. We always had a composite rate case. You claim ever since the world began that you couldn't separate these accounts."

"Q. You would try to put in a part of the tolls into an exchange where the exchange rates were very high, would you?"

"A. If they were owned by the same company, we always put them in."

"Q. Supposing that you were earning practically nothing on the long distance lines and earning eight or ten per cent on the local exchange?"

"A. Well, your company is still in business, and that is one of their ways of earning."

"Q. You would then allocate a part of the long distance lines to the local exchange?"

"A. Why, yes; you ought to allocate to Houston even a part of your earnings on your investment."

"Q. You think that would be considered by a Court or Commission?"

"A. Why, certainly; it is considered."

"Q. Can't you fix your local rate so that you would earn money on your long distance lines?"

"A. No, that has nothing to do with the case. You have plead, and always have pleaded, as your justification for charging that it was because you lost money in the smaller communities. That has been your strong claim all these years."

"Q. How long have you been advocating putting in all of the tolls to local exchange account?"

2138 "A. When it is one company, I have always."

"Q. I didn't ask you that question."

"A. Always; in Kansas City, in the old Kansas City rate case."

"Q. Name one decision by a Court or Commission that followed you."

"A. Well, that is something for the attorneys to find out. I am not interested in that."

"Q. You have testified in three hundred cases?"

"A. Even after I leave the case, I never take the pains to read the case."

"Q. How many times did you advocate that in the three hundred cases?"

"A. Always. You know, if I had not been consistent, you would have had me pinned to the cross the first hour in this case. I have had a consistent program for sixteen years and I have never swerved an inch."

"Q. And nobody has followed you an inch?"

"A. I hope not. I don't care."

"Q. Is your name even mentioned by a single Court or decision,—in a single decision?"

"A. All I am after is this coin.

* * * * *

"Q. Have you, Mr. Kelsey, counted anything in your figures, in your set-up here, for taxes on the long distance lines?"

"A. Oh, yes, they are in there."

"Q. Just show me where your proposition is."

2139 "A. All right. No, your outside taxes are \$693,685.00."

"Q. \$693,685.00?"

"A. That includes your income taxes, and all."

"Q. All right; show me where you proportion any of them in this set-up."

"A. I have not proportioned anything, because your taxes of \$99,000.00 are very unusually high."

"Q. Well, the taxes in Houston are unusually high, aren't they?"

"A. Because the taxes for telephone stations run about \$2.00, and here you have got almost \$3.00, or more."

"Q. You think that is pretty high for them?"

"A. You are paying pretty high taxes; I know you are not responsible."

"Q. Who made these high taxes?"

"A. The community in which you live, which have to pay all their expenses, meets all of these higher costs."

"Q. The taxes that you have here—\$99,965.00,—what is that?"

"A. Well, that wasn't what is left out of your income taxes, but I think that is your full proportion of normal taxes."

"Q. It is nothing on earth except the taxes that are actually paid in the City of Houston."

"A. The physical taxes—I think you can find out more in detail from Mr. Lyndon, why we deducted that."

"Q. Well, you did not allow anything for the income taxes paid, did you?"

2140 "A. No, because you know that the stockholder himself has got to pay that; he ought to, at least, but, of course, in private business they don't; we pass it on. But you folks are caught in this proposition."

"Q. Now, Mr. Kelsey, you had the figures \$123,461.49—"

"A. Yes."

"Q. (Continuing:) All of taxes actually paid for the City of Houston?"

"A. Yes."

"Q. And you had that before you made any allocation whatever?"

"A. No, I did not make any allocation."

"Q. Of the toll lines?"

"A. No."

"Q. You had that when you were on the stand before?"

"A. What was it?—\$123,000.00?"

"Q. \$123,000.00."

"A. All right, one-sixth of your property is in this town. Your total taxes are only \$130,000.00. Now, by this deadly parallel again, Houston is paying more taxes than it should on this basis. You said the maintenance was charged to Houston. I said "charged," or do they actually spend it? Now, you have charged these taxes to Houston, which is about twenty per cent."

I know that the tax rate out in the country is not as large as it is here in Houston. You see, you do not like to go into the things as a whole. Here's all of your taxes, your total taxes your company paid during the year was \$693,000.00. Now, one-sixth of your property is supposed to be here. Your taxes would show that you are carrying your proper burden."

2141

"Q. Suppose the City of Houston didn't think it was, and stuck \$123,000.00 on us?"

"A. But part of that is income; I didn't stick that on you."

"Q. All right, take \$99,965.00 that was paid to the City of Houston."

"A. They did in other places."

"Q. We paid that in Houston."

"A. County too, didn't you, and State?"

"Q. In the City of Houston,—for County, State and City."

"A. Yes."

"Q. Now, you went out and got all of our long distance property and allocated it to Houston, didn't you?"

"A. Yes, because we had always paid our share of the total tax on it."

"Q. You did not bring in Texas with it, when you did it?"

"A. Yes, it all is; it is more than here, Mr. Frank. You have got 16½% of your property in this community, but you have got it loaded with practically 20% of your taxes."

"Q. Is there any tax at all in the City of Houston on the \$808,000.00 of long distance property?"

"A. There is in the State."

2142 "Q. Why didn't you bring it into your statement?"

"A. We are paying our share. You have allocated and loaded everything on Houston that you could possibly get, because it is human nature; if you ever missed putting a dollar in it, I am surprised."

"Q. Wasn't \$99,000.00 the actual figure, Mr. Kelsey?"

"A. I don't know. Mr. Lyndon furnished these figures, and when that gentleman comes I want you to solve that with him."

"Q. And you didn't figure anything at all on this \$808,000.00?"

"A. Yes, I did."

"Q. It is in there?"

"A. Why, certainly it is. That is why I went to Dallas and got your General Office expense."

"Q. Now, if we paid it to the City of Houston, then we paid to the City of Houston——"

"A. (Interrupting.) Altogether, your company paid everybody,—Houston, Dallas, Fort Worth, the United States Government, the State of Texas, and all the Counties in them, \$693,685."

"Q. How much city taxes did we pay the City of Houston on the toll investment of \$808,000.00?"

"A. I don't suppose you paid any."

"Q. You say it is in there. I wanted to know how much is in there."

"A. Because it is bound to be in there. You have got one-sixth of your property. I am talking about the load that your company carried in this town. This maintenance load is something that you charged here——"

2143 "Q. (Interrupting.) Do you realize that you are under oath and that you are swearing?"

"A. Yes, you bet. You have never let me forget that for a minute. You have kept me out of trouble all during this case."

"Q. And still you say that no taxes ought to be allowed on the \$808,000.00?"

"A. It is allowed and it is in here, Mr. Frank."

It is in there, because I have said repeatedly that during the year the total taxes paid, every community, every hamlet, every township, every county, every part of the State, the United States Government, and all, was \$693,685.00. They have charged this community down here an amount which, instead of being about one-sixth, as it ought to be, is about one-fifth. I don't care about the fact that the taxes in Houston are about double what they are around the rest of the State; the figures are here.

"Q. But the City of Houston collected from us \$99,965.00."

"A. That is all right; the City of Houston is diligent."

"Q. Now, if you are going to allocate \$800,000.00 worth of long distance property, can you conceive of it being fair to allocate some of that \$808,000.00——"

"A. (Interrupting.) No, you have already got it in there, 2144 because the taxes that you paid to the City of Houston is in this \$693,000.00, and by a strange coincidence one-sixth of your property is located here, but you have got one-fifth of your taxes loaded here. Now, it is very curious; now, you know that you have got Houston loaded with everything the old camel will bear, and it would be natural for you to do it in a rate case,—to put all of your expenses in, and you never missed an opportunity to leave out a dollar."

"Q. If the Court should tell you,—if you knew that the Court was going to—that the \$808,000.00 was not going to be allowed as an item, then would the \$99,000.00 tax have to be cut any?"

"A. I am not interested in that."

"Q. Ought it to be cut? Suppose you were instructed by the Court to confine your property to the property within the City limits,—would the \$99,000.00 be cut in any way?"

"A. No."

"Q. It wouldn't be cut, would it?"

"A. I can't see how it would. You would have to pay it. I can't conceive of the Court refusing to consider this \$99,000.00."

It seemed reasonable to me to throw out the income tax. You claimed that you are losing money, so I can't imagine how you could be charged with that when you are losing money. Mr. 2145 Lyndon had that view point, and that is for you and him to fight out. When I went to Dallas and found out your total taxes of \$693,000.00 for the entire company, I felt that we were not far off.

It is a fact that taxes in Houston are higher than in any other City in Texas.

"Q. On that account, because of the fact the City of Houston is higher than any other City in Texas, you would not allocate any taxes to the long distance property?"

"A. You have got it allocated; you must have, because your total tax is \$693,000.00, and when you compare it,—one-sixth of the property is here and you have got about one-fifth of it."

"Q. Why didn't you investigate it?"

"A. I wasn't interested in that particularly. I think you and Mr. Lyndon can fight that out."

"Q. Who is going to pay the taxes that you have thrown out?"

"A. You have already paid it—\$693,000.00."

"Q. What community is going to pay that?"

"A. All of them,—everyone in the telephone business."

"Q. What about general expenses?"

"A. You have it in here."

"Q. \$377,384.00, general expense for the entire company."

"A. Yes, sir."

2146 "Q. Did you put any of that general expense into your set-up,—in your new set-up?"

"A. It is all in there. You have a general expense of \$377,000.00."

"Q. How much did you put it?"

"A. I accepted your figure for it. I compared it and found out that Houston was bearing a share."

"Q. Our figures were set up for local exchange?"

"A. No, sir. You have no general office expense here of \$48,640.00; it would be absurd."

"Q. Why would it be?"

"A. It is ridiculously high. That is your general office loading. You know that very well. It is carried out through the community."

"Q. Do the toll properties bear any of the general office expense?"

"A. Sure, you are all doing it."

"Q. Why didn't you allocate—"

"A. (Interrupting.) It is all here."

"Q. Did we make up this set-up?"

"A. Yes, sir, you did."

"Q. We made the set-up for the local exchange?"

"A. Yes, sir; you have everything in here possible to get."

"Q. And you got ten per cent, or nine and four-tenths per cent of the property and brought it in here and took the whole one hundred per cent of the tolls?"

2147 "A. I thought the Houston subscribers ought to bear their share."

I did not bring in my nine and four-tenths per cent of the general expense; that is already in here, allocated in here. I brought in nine and four-tenths per cent of the taxes.

I did bring in nine and four-tenths per cent of the maintenance; it is all in here. All you have got to do is to compare your total with your Houston figures. It is a remarkable coincidence if Houston escapes her share.

"Q. Did you find out there is some operating expense for the toll plant around over the State that was not allocated?"

"A. Yes, sir; it is allocated in here."

"Q. Where?"

"A. In your supervision."

You have maintenance supervision and traffic supervision. You don't suppose it costs \$26,000.00 to supervise traffic in this town. You have got a commercial expense in this town of \$74,000.00, and then I find that you have \$10,657.00 of general commercial expense left. That is not on the local exchange; Houston district. You run out of here and repair your toll lines, and your boys take out the wire and cross arms, and all those things, and they go half way to Galveston and Galveston comes half way here. You know very well that you have no separate long distance operation at all.

Your toll line repairs are paid out of the Houston exchange.
2148 The toll expenses are charged right in here. I did not allocate any to the City of Houston,—you are very peculiar. The biggest item of your expense is in the operators and you have them all here, and then you go and quarrel with little petty maintenance or little petty general expense.

"Q. If you are going to divide all the expense of the toll of the entire State——"

"A. (Interrupting.) Does the local manager watch the toll lines out of here?"

"Q. I asked you this question. If you are going to divide the toll expense of the State, oughtn't you to find out what the total expenses are?"

"A. I don't know what they are. Ever since 1904 until I struck your remarkable personality in this case, you always insisted you could not separate them. Now I find a separation suddenly evolved here."

"Q. Where are we doing that?"

"A. You just now said you did. You came in yesterday showing that you had \$40,000.00 maintenance on toll lines."

"Q. Didn't you know there was any on a toll line?"

"A. Yes, sir; there is maintenance even on a brick house."

"Q. What you did was to take the line and take all of the reveunes and ignore the expenses?"

"A. No, sir; the expenses are all here. These expenses of
2149 the running of the Southwestern Company have been all paid and loaded on to the place they belong. That is natural. There never was a company in the world that didn't allocate its expenses to where they belonged, and that is what you done, and you do it beautifully, too.

"Q. The revenue you have got in here is the revenue for last year, and not prepared for this year at all?"

"A. No necessity for it."

* * * * *

"Q. Let me detail just a few of the things that you have in here, about which, at least, there is some question.

"A. I don't think there is a question about the figures."

"Q. Under receipt, exchange rentals, \$880,439.28, of which \$130,000.00 is due directly to the increased rates which were charged during Government control,—that is item number one. Item No. 2—the tolls,—you have allocated a full 100%.—"

"A. (Interrupting.) I haven't allocated at all. That is what you done."

"Q. Which means \$441,029.80—"

"A. (Interrupting.) There is no allocation there."

"Q. So, whereas, if this was an independent plant and the toll lines belonged to a separate company, 75% of that would have to be thrown out and only 25% retained."

"A. This is not an independent company."

2150 "Q. That is item No. 2. Item No. 3 is that there should be $4\frac{1}{2}\%$ of the total gross receipts, amounting to about \$58,000.00, for the $4\frac{1}{2}\%$ payment, and you have thrown that all away."

"A. No, sir. The owner gets that anyway. That is all in there. When you count that money up it is all there."

"Q. You have thrown that away."

"A. No, sir; I haven't taken that away from anybody. It is all there."

"Q. And instead of that you put: "Less Instrument Rental, \$13,250.00."

"A. Yes, sir; fifty cents per station."

"Q. You have taken the maintenance \$110,675.00 in the City of Houston."

"A. That is local maintenance."

"Q. Reconstruction \$9,000.00, when the Local Reconstruction was \$32,000.00. That makes \$23,000.00 more."

"A. No, sir; it is in the maintenance. That is part of your \$110,000.00 maintenance."

"Q. You have been told we would be subject to a \$5,000.00 fine if we did that."

"A. No, sir; that reconstruction is in your maintenance account, and you know it is."

"Q. The testimony in this case, Mr. Kelsey, shows there is \$32,000.00 in addition to the \$110,000.00."

"A. Why wasn't it in there?"

2151 "Q. Because it is not properly chargeable as maintenance."

"A. Why wouldn't all the maintenance chargeable to Houston be in here?"

"Q. The other items you have in here are for the local exchange down to total disbursement. If, however, the Court should conclude a part of the tolls should be counted in the City of Houston, you would have to add a certain amount for toll maintenance and a certain amount for toll reconstruction."

"A. It is that.

"Q. And for supervision, and a certain amount for traffic operators, and a certain amount for incidentals miscellaneous, and a certain amount for supervision, and in addition to that an additional amount would have to be added for general commercial expense in addition to the items we already have."

"A. Do you want Houston to carry the entire load of the Company? You pretty near suggest it, if you carry out your plan."

"Q. In addition to that, Mr. Kelsey, you have taken our figures for the uncollectibles."

"A. That is \$15,084.11"

"Q. And you have taken into account—and have not taken into account \$70,000.00 of uncollectibles. You have eliminated entirely the income tax of twenty-five or thirty-five thousand dollars, and have taken only the taxes paid in the City of Houston, 2152 amounting to \$99,965.00. If you want to allocate any portion of the toll lines to the City of Houston, the taxes on that property ought to be added on your figures that you have. Is that true?"

"A. No, sir; if that was true you would find that Houston was carrying about one-half of the Southwestern total in the State."

"Q. Then, you have reserved for depreciation \$146,120.00, which is set up in your original report as being proper for the local exchange in the City of Houston, and you have not added anything on account of the fact that you allocate 9% of the long distance lines——"

"A. (Interrupting.) It is all in there. It is quite a coincidence that you have 19% of the depreciable charge to Houston when you are only one-sixth of the total company. It is a curious proposition that Houston gets it every time."

Mr. Howard: What percentage of the maintenance is allocated to Houston?

"A. About 19%."

Mr. Howard: What part of the property is located here?

"A. 16½%."

"Q. In addition to that, Mr. Kelsey, your reproduction value, 1914, company figures, you use \$2,672,211.00, as compared 2153 with the Company figures of \$3,372,667.00. That is true?"

"A. No, sir."

"Q. It is also true that you left out the \$700,000.00 intangibles?"

"A. No, sir."

"Q. Which ought to be added in?"

"A. That has not been demonstrated."

"Q. If it has been left out, it ought to be added in?"

"A. No, sir; the Court ought to investigate very closely that expense since 1914."

"Q. In addition to that, Mr. Kelsey, assuming the very lowest percentage of the toll plan, even on your own theory——"

"A. (Interrupting.) I did not. I followed the one and only way of measuring that. When you deal in corn, you deal with bushels, and when you deal in cotton, you deal with bales."

"Q. I told you before you got off the stand the other time, that is what you would do?"

"A. I would take the word of any opposing lawyer in a law suit."

"Q. I predicted that you would use the lowest percentage."

"A. You are a good prophet."

"Q. You just answered Mr. Howard that what per cent of the maintenance was charged to Houston."

"A. Maintenance and depreciation,—you can't separate them; 19%."

2154 "Q. The total company maintenance, according to your own figures, is \$1,112,441.00?"

"A. And the depreciation is \$1,446,406.00."

"Q. We are talking about maintenance."

"A. They are brothers and sisters,—you can't separate them."

"Q. If you had a big storm one year, your maintenance would be greater?"

"A. Yes, sir, certainly it would."

"Q. What would happen to your percentage down here of seven and seven-tenths per cent, if the \$130,000.00 be taken out of the \$880,000.00?"

"A. What?"

"Q. If the \$130,000.00——"

"A. What right have you got to take it out?"

"Q. What would happen to it,—increase or decrease?"

"A. Probably decrease, but you got that money."

"Q. What would happen if the whole 100% of the tolls was not allocated to the City of Houston, would your total percentage be increased or decreased?"

"A. I can't change the law of mathematics, Mr. Frank."

"Q. Answer my question."

"A. That is certainly answering the question."

"Q. Would it increase or decrease?"

"A. That is a self-answering question."

"Q. Answer the question."

2155 "A. I said I couldn't change the law of mathematics."

"Q. Do you mean that would decrease it?"

"A. No, sir; I leave that to your own clever interpretation."

"Q. Answer the question."

"A. I answered the question by saying that I couldn't change the law of mathematics. Three and two is always five, and two from five is always three."

"Q. To allow the 4½% would also decrease it?"

"A. Not in this case, because I am dealing with the owners' profit. The owner in this case claims confiscation. The owner put this in his pocket."

"Q. To add anything to maintenance would increase it?"

"A. It would."

"Q. To add for taxes?"

"A. That is mathematically sound."

"Q. And to add anything for uncollectibles would decrease it?"

"A. But still you would come in here claiming confiscation——"

"Q. (Interrupting:) To add anything here to the company's figure for reproduction value in 1914 would decrease it?"

"A. If you keep on you will have the entire load on Houston's shoulders."

"Q. That would decrease it?"

"A. I can't change the law of mathematics."

"Q. If the \$700,000.00 on account of intangibles,—if that was added in, that would decrease it?"

2156 "A. Yes, sir."

"Q. If you allocate the toll investment in the State of Texas on any other basis than on the one you used——"

"A. There would not be any logical way of allocating that."

Redirect examination.

Questions by Mr. W. J. Howard:

If they did not earn any money at all, that apparently would decrease their returns. I repeat, I can not change any law of mathematics.

"Q. All these statements that Mr. Frank,—the testimony which Mr. Frank has just given, you don't concur in them?"

"A. Certainly I do not."

"Q. And the questions he asked were merely Mr. Frank's construction of these figures, and you don't concur in his statement?"

"A. Further, he is treading on dangerous ground if he carries it to a conclusion."

"Q. You don't concur in his testimony?"

"A. I certainly do not."

"Q. Mr. Kelsey, just one other thing I am concerned with here,—a thing that Mr. Frank has overlooked. He has overlooked developing the manufacturing cost of the telephone manufacturing companies, such as Kellogg and the Western Electric Company, and the others. I wish you would state, Mr. Kelsey, if you know from actual experience whether the profit upon those manufactured articles by all of these companies is small or enormous."

"A. Large, enormous, and always have been. There is no more profitable business on earth than the telephone manufacturing."

"Q. The Western Electric Company is furnishing this equipment to this local exchange, as I understand you; is furnishing them at enormous profit?"

"A. Yes, sir."

Taking the manufactured cost of this telephone equipment they have here and adding to it a legitimate profit of ten or fifteen or twenty per cent, taking the manufacturing cost as a basis, it would approximate fifty per cent of the amount that is charged to this local company, because you have eliminated all expenses of sale. There is no sale expense. The sale expense is usually 100% alone, and that is entirely missing in this transaction. These companies order this apparatus a year in advance and there are no salesmen on the pay roll. That is an expense that all independent companies have, a tremendously expensive sales department. It would approximate

fifty per cent, including the salesmen's cost, but eliminating that, it would not, and there is no salesman's cost.

2158 Recross-examination.

Questions by Mr. D. A. Frank:

I have not examined a single book of the telephone company to see what prices are being paid. I have not examined a single work order in the City of Houston to see what has been paid; I am not interested in that at all.

I do not know that the Southwestern and all the associated companies buy their equipment from the Western Electric Company at a very much lower price than the independent companies have been able to buy them; it does not appear in any transaction I have ever seen.

"Q. The testimony in this case shows that one engineer who was entirely independent of the Bell Company——"

"A. (Interrupting.) Who in the world is that?"

"Q. Mr. Topping."

"A. Yes, sir, entirely independent,—brought up by hand by your people. That is a good example. Poor Topping was raised by you fellows all through the age of impression."

"Q. Is it a crime to have worked for the Bell Company?"

"A. You never can change a man's view point after you get him."

"Q. Have you changed many of your view points?"

"A. I left them when I was still young."

2159 "Q. Take Mr. Hoag's appraisal and show us how much could be saved on the various items.

"A. The thing to do is to put that up into honest, competitive conditions."

"Q. Show us how much can be saved."

"A. I will not attempt to do that."

"Q. You will not attempt it?"

"A. It is according to how anxious the Kellogg and other companies would be for the business."

"Q. You will not undertake to show us what money could be saved?"

"A. Not at this time, but if you will give me a bona fide order, I would fix it for you.

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